

No. 12867

United States
Court of Appeals
for the Ninth Circuit.

Serial. 2689

WESTERN AIR LINES, INC.,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD,

Respondent.

Transcript of Record
In Two Volumes
Volume I
(Pages 1 to 462)

Petition For Review of Orders of the
Civil Aeronautics Board.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
JUL 11 1951
PAUL P. O'BRIEN
CLERK



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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Answer of Public Counsel to the Petitions of Labor Organizations for Reconsideration of the Order of August 26, 1947.....	227
Answer of Western Air Lines, Inc., in Opposition to the Petitions of Air Line Mechanics Division, UAW-CIO for Leave to Intervene, for Reconsideration and for a Stay of the Board's Order.....	239
Answer of Western Air Lines, Inc., in Opposition to the Petition of Air Line Pilots Assoc. for Reconsideration of the Board's Decision.	238
Application of Western Air Lines and United Air Lines for Order Approving Sale of Certain Properties and Transfer and Amendment of a Certificate of Public Convenience and Necessity	3
Ex. A—Agreement	9
Brief in Behalf of the Brotherhood of Railway Steamship Clerks, Freight Handlers, Express and Station Employees.....	64, 808
Certification of Transcript of Record.....	873

	INDEX	PAGE
Designation by Petitioner of the Parts of the Record Which Are Believed to Be Material for Consideration on Review and Which Should Be Included in the Printed Record...		883
Exhibits of Air Line Pilots:		
No. 1—Statement of A. W. Stephenson, Western Air Lines Inc., Pilot Employee.		771
2-16—Explanation of the Statistical Ex- hibits		786
Ex. 2—Explanation of.....		788
3—Explanation of.....		789
4—Explanation of.....		789
5—Explanation of.....		790
6—Explanation of.....		790
7—Explanation of.....		791
8—Explanation of.....		791
9—Explanation of.....		792
10—Explanation of.....		792
11—Explanation of.....		793
No. 17—Summary Comparison of Six- Month Period, February Through July, 1947, 1948 and 1949.....		795
Exhibits of Brotherhood of Railway Clerks:		
A—Condition for the Protection of Em- ployes		797

INDEX

PAGE

Exhibits of B. of Ry. Clerks—(Continued):

B (Supp)—List of Employees Furloughed
or Terminated as a Result of the Trans-
fer of Route 68..... 804

B—List of Employees Furloughed or Termi-
nated as a Result of the Transfer of
Route 68 805

Exhibit of United Air Lines:

UAL-T-1—Direct Testimony of W. A. Pat-
terson, President, United Air Lines, Inc. 56

Exhibit of Western Air Lines:

WT-1—Direct Testimony of Terrell C.
Drinkwater 54

Letter From UAW, CIO Dated February 9,
1950 806

Memorandum of United Air Lines, Inc., in
Reply and Opposition to Petitions of Airline
Mechanics Division, UAW-CIO..... 235

Memorandum of United Air Lines, Inc., in
Reply to the Petition of Air Line Pilots
Assoc. for Reconsideration of the Board's
Order of August 25, 1947..... 231

Names and Addresses of Attorneys..... 1

Opinion Dated August 25, 1947..... 65

Appendix A—United Air Lines, Inc., Sum-
marized Balance Sheet..... 185

Order 186

Order Amending Order Serial Number E-792 . . 892

Supplemental Order Serial Number E-793 894

INDEX	PAGE
Petition for Stay of Board Order.....	229
Petition of Western Air Lines, Inc., for Re- hearing, Reargument and Reconsideration...	860
Petition of Western Air Lines for Review of Orders of the Civil Aeronautics Board.....	57
Report of Prehearing Conference.....	19
Appendix A—Discussion of Issues.....	28
Statement of Points on Which Petitioner In- tends to Rely on Petition for Review.....	881
Transcript of Hearing.....	37
Transcript of Reopened Hearing.....	250
Witnesses:	
Drinkwater, Terrell C.....	41
Hoagland, J. I.....	269
Horn, C. M.....	288
Kelly, Arthur F.....	677
McErlean, C. F.....	753
McKinney, Lyle.....	642
Munch, Fred O.....	48
Oakman, Ronald.....	562, 583
Patterson, W. A.....	46
Stephenson, A. W.....	300
Unterberger, S. Herbert.....	465

INDEX	PAGE
Opinion Upon Motion for Leave to Intervene Filed May 25, 1951.....	888
Opinion in Reopened Proceedings.....	816
Order E-4444 Modifying Order Approving Acquisition	842
Order No. E-1894.....	245
Order No. E-4620.....	852
Order No. E-4987.....	861
Order Filed April 23, 1951.....	887
Order No. E-4512 Extending Date for Filing of Petition for Reconsideration.....	850
Order No. E-598 Granting Petition of Western and United for Initial Decision by the Board.	58
Petition of Air Line Pilots Association, Inter- national, for Leave to Intervene.....	13
Petition of Air Line Pilots Association for Re- consideration of Order E-772.....	192
Attachment No. 1.....	213
Petition for Leave to Intervene.....	14, 214
Petition for Permission to File Out of Order a Request That the Board Reconsider and Modify Its Order of August 25, 1947.....	240
Petition for Reconsideration of Order E-772...	218
Petition for Rehearing, Reargument, and Re- consideration of Board Order Serial No. E-4444, Dated July 7, 1950.....	854



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Express and Station Employees.

Before the Civil Aeronautics Board

Docket No. 2839

In the Matter of:

The Application of WESTERN AIR LINES, INC., and UNITED AIR LINES, INC., Under Sections 401, 408 and 412 of the Civil Aeronautics Act of 1938, as Amended, for an Order Approving an Agreement for the Sale of Certain Properties and the Transfer and Amendment of a Certificate of Public Convenience and Necessity.

APPLICATION

Applicants, Western Air Lines, Inc., and United Air Lines, Inc., respectfully represent:

I.

Western Air Lines, Inc., referred to as "Western," is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 135 South Doheny Drive, Beverly Hills, California.

United Air Lines, Inc., referred to as "United," is a corporation organized and existing under the laws of the State of Delaware with its principal office located at 5959 South Cicero Avenue, Chicago, Illinois.

II.

Western is an air carrier holding certificates of public convenience and necessity issued under the

Civil Aeronautics Act of 1938, as amended, for the transportation of persons, property and mail over routes designated as Numbers 13, 19, 52, 63 and 68.

United is an air carrier holding certificates of public convenience and necessity issued under the Civil Aeronautics Act of 1938, as amended, for the transportation of persons, property and mail over routes designated as Numbers 1, 11, 17 and 57. [2*]

III.

Western and United are citizens of the United States as defined by Section I(13) of the Civil Aeronautics Act of 1938, as amended.

IV.

As of March 6, 1947, applicants entered into an agreement under which Western has agreed to sell and transfer and United has agreed to purchase and accept Certificate of Public Convenience and Necessity for Route Number 68 between Los Angeles, California, and Denver, Colorado, and certain other properties, subject to the terms and conditions of the agreement. A copy of the agreement between applicants is marked Exhibit "A" and attached to this application.

V.

The agreement between applicants provides that in the event of approval of the transfer of the certificate for Route Number 68, United shall not have the right to carry passengers, property or mail be-

* Page numbering appearing at top of page of original Reporter's Transcript.

tween Los Angeles, California, and Las Vegas, Nevada, and that appropriate steps shall be taken by applicants to cause the certificate to be amended by including a restriction prohibiting the transportation by United of passengers, property or mail between those points.

VI.

Consummation of the agreement between applicants and the transfer of the Certificate of Public Convenience and Necessity for Route Number 68 from Western to United will be consistent with the public interest, will not result in creating a monopoly or monopolies, will not cause a restraint of competition and will not jeopardize any other air carrier.

VII.

The public interest will be affected adversely unless issuance of the Board's order under this application shall be expedited to the extent possible under the Act and under applicable [3] rules of procedure.

Wherefore, applicants pray:

(1) That a hearing be held on this application following the minimum notice required by law and that all procedural steps prior and subsequent to the hearing not involving the Board's jurisdiction or due process of law be waived;

(2) That the agreement between applicants executed as of March 6, 1947, be approved;

(3) That the transfer from Western to United

of the Certificate of Public Convenience and Necessity for Route Number 68, in accordance with the provisions of the agreement between applicants, be approved;

(4) That as and when transferred from Western to United the Certificate of Public Convenience and Necessity for Route Number 68 be amended by including a restriction prohibiting the transportation by United of passengers, property or mail between Los Angeles, California, and Las Vegas, Nevada;

(5) That applicants, jointly or severally, be authorized to execute and deliver any documents and to accomplish any acts which may be necessary or deemed convenient to consummate the agreement between applicants; and,

(6) That such other relief be accorded as may appear appropriate or advisable.

Dated: March 6, 1947.

Respectfully submitted,

WESTERN AIR LINES, INC.,

By /s/ TERRELL C. DRINKWATER,
President.

UNITED AIR LINES, INC.,

By /s/ W. A. PATTERSON,
President. [4]

Verification

State of California,
County of Los Angeles—ss.

Terrell C. Drinkwater, being first duly sworn,
deposes and says:

That he is President of Western Air Lines, Inc.,
a corporation, one of the Applicants in the above-
entitled matter, and is an executive officer of said
corporation; that he has read the foregoing Appli-
cation and is familiar with the contents of said
Application and the exhibits attached thereto; that
he intends and desires that in granting or denying
the rights and privileges therein applied for the
Board shall place full and complete reliance on the
accuracy of each and every statement therein con-
tained; that he is familiar with the facts therein
set forth, and, to the best of his information and
belief, each statement contained in said Applica-
tion is true, and no such statement is misleading;
that, in his opinion, said Application does not omit
to state any facts known to him which would be
deemed by the Board to be of importance to it in
reaching its determinations in connection therewith.

/s/ TERRELL C. DRINKWATER.

Subscribed and sworn to before me this 6th day
of March, 1947.

[Seal] /s/ PATRICIA K. McDONALD,
Notary Public in and for the County of Los An-
geles, State of California.

My Commission Expires May 5, 1950. [5]

Verification

State of California,
County of Los Angeles—ss.

W. A. Patterson, being first duly sworn, deposes and says:

That he is President of United Air Lines, Inc., a corporation, one of the Applicants in the above-entitled matter, and is an executive officer of said corporation; that he has read the foregoing Application and is familiar with the contents of said Application and the exhibits attached thereto; that he intends and desires that in granting or denying the rights and privileges therein applied for the Board shall place full and complete reliance on the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth, and, to the best of his information and belief, each statement contained in said Application is true, and no such statement is misleading; that, in his opinion, said Application does not omit to state any facts known to him which would be deemed by the Board to be of importance to it in reaching its determinations in connection therewith.

/s/ W. A. PATTERSON.

Subscribed and sworn to before me this 6th day of March, 1947.

[Seal] /s/ PATRICIA K. McDONALD,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 5, 1950. [6]

EXHIBIT A

Agreement

This Agreement, Made and entered into as of this 6th day of March, 1947, by and between Western Air Lines, Inc., a Delaware corporation, with its principal office in Beverly Hills, California, hereinafter referred to as "Western," and United Air Lines, Inc., a Delaware corporation, with its principal office in Chicago, Illinois, hereinafter referred to as "United,"

Witnesseth:

That, Whereas, Western is the holder of a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board, pursuant to the Civil Aeronautics Act of 1938, as amended, authorizing the transportation of persons, property and mail over a route between Los Angeles, California, and Denver, Colorado, via Las Vegas, Nevada, and Grand Junction, Colorado, known and designated as Route No. 68, and is the owner of certain properties used and useful in connection with the operation of that route; and,

Whereas, United is the holder of Certificates of Public Convenience and Necessity issued by the Civil Aeronautics Board, pursuant to the Civil Aeronautics Act of 1938, as amended and is desirous of acquiring Route No. 68, together with certain equipment and property used and useful in connection with the operation of that route, and West-

ern is willing to sell and transfer to United such route and property, subject to the terms of this agreement;

Now, Therefore, for and in consideration of the premises and mutual promises of the parties, and other good and valuable considerations, it is hereby agreed as follows:

First: Western agrees to assign, transfer and deliver to United its Certificate of Public Convenience and Necessity for Route No. 68 and certain property used and useful in connection with the operation of that route, an itemized inventory of which property will be prepared by Western and approved by the parties and attached to this agreement as Exhibit "A." United agrees to purchase and accept such Certificate and items of property.

Second: The items of property listed in Exhibit "A" shall be subject to substitution by Western at the time of delivery provided the substituted items shall have the same cost value as the items replaced.

Third: United shall pay Western in cash as consideration for this agreement the sum of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00), which sum shall be paid upon the consummation of this agreement, as hereinafter provided.

Fourth: As soon as reasonably possible after the execution of this agreement, the parties acting together shall file an appropriate application with the

Civil Aeronautics Board pursuant to the applicable section or sections of the Civil Aeronautics Act, seeking an order approving the complete consummation of this agreement. The parties shall place in motion every available effort to cause such application to be heard and concluded as expeditiously as possible. Each party shall bear its own expenses which may be incurred in preparing and prosecuting such application.

Fifth: The application referred to in paragraph Fourth shall include a request that the Civil Aeronautics Board amend the Certificate for Route No. 68 simultaneously with the approval of the transfer of said Certificate to United, by including therein a restriction prohibiting the transportation by United of passengers, property and mail between Los Angeles, California, and Las Vegas, Nevada.

Sixth: Within two (2) days following the execution of this agreement, United will loan Western the sum of One Million and no/100th (\$1,000,000.00) Dollars, in cash, as a loan. Upon the receipt thereof, Western will execute and deliver to United a promissory note due on or before September 1, 1947, secured by a Chattel Mortgage. Both the note and Chattel Mortgage shall be in a form approved by United.

In the event the consummation of this agreement is approved by the Civil Aeronautics Board on or before September 1, 1947, the One Million and no/100th (\$1,000,000.00) Dollars so loaned Western shall be credited to the total consideration to be

paid Western under the provisions of paragraph Third of this agreement.

In the event consummation of this agreement shall be disapproved by the Civil Aeronautics Board prior to September 1, 1947, the One Million and no/100th (\$1,000,000.00) Dollars so loaned shall bear interest at the rate of three per cent (3%) per annum from the date of the Board's order.

Seventh: Should the Civil Aeronautics Board approve such acquisition and consummation, the consideration going from United to Western and the consummation of the transfer and assignment of the Certificate and other property shall take place on the 21st day following the issuance of such order of the Board. Delivery of the items of property listed in Exhibit "A" shall be effected at such place as may be designated by United with the cost of effecting the delivery being borne by United.

Eighth: Each of the parties hereto shall execute any assignments, bills of sale, or other documents, which may be required or deemed required to effectuate and fully consummate the objectives of this agreement.

Ninth: In the event, and only in the event, the Civil Aeronautics Board shall issue its order disapproving the consummation of this agreement, the parties hereto shall be relieved of the obligations taken hereunder. Upon the issuance of such order, neither of the parties hereto shall be obligated under any of the provisions hereof, but Western shall,

nonetheless, be obligated to United on account of the promissory note and Chattel Mortgage, according to the terms thereof.

In Witness Whereof, the parties hereto have hereunto set their hands and official seals the day and year hereinabove first written.

WESTERN AIR LINES, INC.,

By /s/ TERRELL C. DRINKWATER,
President.

/s/ PAUL E. SULLIVAN,
Secretary.

UNITED AIR LINES, INC.,

By /s/ W. A. PATTERSON,
President.

/s/ SAM P. MARTIN,
Secretary.

Filed March 7, 1947. [10]

Before the Civil Aeronautics Board

[Title of Cause.]

PETITION OF AIR LINE PILOTS' ASSOCIATION,
INTERNATIONAL, FOR LEAVE
TO INTERVENE

Names, Titles and Addresses of Persons to Whom
Communiations Are to Be Sent:

David L. Behncke, President, Air Line

Pilots' Association, 3145 West 63rd Street, Chicago 29, Illinois.

John M. Dickerman, Attorney, Air Line Pilots' Association, 1185 National Press Building, Washington 4, D. C. [64]

MOTION FOR LEAVE TO INTERVENE

Comes Now your petitioner, the Air Line Pilots' Association, International (A. F. of L.), an unincorporated Association, commonly known as a "labor union," and respectfully represents that it has a substantial interest in the above-entitled proceeding, and that it desires to intervene and become a party to said proceeding. This Association consists of and is the duly designated representative of the licensed commercial air line pilots flying on certain domestic and foreign American flag air lines subject to the jurisdiction of this Board.

The Association represents that it has entered into contractual relationships, both oral and written, with the air lines respecting wages, hours and conditions of employment of such pilots pursuant to the provisions of the Railway Labor Act, as amended.

The air line pilots employed by Western Air Lines, Inc., have certain contractual employment rights and privileges which are the subject of an Employment Agreement dated November 16, 1940, and certain other amendments, supplements and letters of agreement presently in effect between Western Air Lines, Inc., and the Air Line Pilots' Association, International, negotiated and con-

cluded under the provisions of the Railway Labor Act, as amended. Likewise, the air line pilots employed by United Air Lines, Inc., have certain contractual employment rights and privileges which are the subject of an Employment Agreement originally entered into on October 8, 1940, and certain other amendments, supplements and letters of agreement presently in effect between United Air Lines, Inc., and the Air Line Pilots' Association, International, negotiated and concluded under the provisions of the Railway Labor Act, as amended. Such employment agreements, amendments and supplements cover not only hours and wages but other employment conditions such as travelling expenses, scheduling, vacations, seniority, leaves of [65] absence, transfers, promotions, grievance proceedings and many other rights and privileges in connection with their employment as air line pilots by Western Air Lines, Inc., and United Air Lines, Inc.

There is pending in the above-entitled case an application by Western Air Lines, Inc., and United Air Lines, Inc., for Civil Aeronautics Board approval of an agreement made and entered into as of March 6, 1947, by and between Western Air Lines, Inc., and United Air Lines, Inc., whereby United agrees to purchase, subject to Board approval, for the sum of three million seven hundred fifty thousand dollars (\$3,750,000) from Western, a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board to Western Air Lines, Inc., authorizing the transportation of

persons, property, and mail between Los Angeles, California, and Denver, Colorado, via Las Vegas, Nevada, and Grand Junction, Colorado, known and designated as Route Number 68 and certain other properties used and useful in connection with the operation of that Route.

The Association further represents that it is a matter of great public interest and convenience that the substantial rights which the pilots of Western Air Lines, Inc., have secured by virtue of the agreement made by and between Western Air Lines, Inc., and the air line pilots in the service of Western Air Lines, Inc., as represented by the Air Line Pilots' Association, International, and identified above, would be seriously affected by the proposed sale of Route Number 68 and the property used in connection therewith and are in need of protection and consideration by the Board in this matter. Further, that similar substantial rights which have accrued to the air line pilots employed by United Air Lines, Inc., by virtue of a similar employment agreement, as identified above, are in need of protection and consideration by the Board as a result of this proposed acquisition by United Air Lines, Inc. [66] The Association further states that it represents such property and financial interests of the pilots that they will not be properly represented except through their duly authorized and designated agency, namely, this Association.

Wherefore, this petitioner, the Air Line Pilots' Association, International, prays that leave be granted to it to intervene and participate in the

hearing in order fully to protect its property and contractual rights that have been established throughout the United States and on Western Air Lines, Inc., and United Air Lines, Inc., and for the protection of its members respecting seniority and other employment rights and to become a party to the above-mentioned proceeding with a right to receive notice of and to appear at hearings; to introduce evidence; to produce, examine and cross-examine witnesses; and to be heard upon brief and oral argument if oral argument is granted.

Respectfully submitted,

AIR LINE PILOTS' ASSOCIA-
TION, INTERNATIONAL,

By /s/ JOHN M. DICKERMAN,

Attorney for the Air Line Pilots' Association, International.

Dated March 15, 1947. [67]

District of Columbia—ss.

John M. Dickerman, being duly sworn, deposes and says: That he is the Attorney for the Air Line Pilots' Association, International, and has specific authority to submit this petition on behalf of the Association; that he has read and is familiar with the contents of the foregoing petition for leave to intervene; that he intends and desires that in granting or denying said petition the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that

he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained in the said petition is true and that no such statement is misleading.

/s/ JOHN M. DICKERMAN.

Subscribed and sworn to before me this 15th day of March, 1947.

[Seal] /s/ RUTH B. HAMMOND,
Notary Public.

My Commission Expires Feb. 28, 1952.

Certificate of Service

It Is Hereby Certified that a copy of the foregoing petition for leave to intervene has this day been served upon each party to the above-entitled proceeding.

Dated at Washington, D. C., this 15th day of March, 1947.

/s/ JOHN M. DICKERMAN,
Attorney for the Air Line Pilots' Association, International.

Filed March 7, 1947. [68]

United States of America, Civil Aeronautics Board
[Title of Cause.]

REPORT OF PREHEARING CONFERENCE

Exceptions, if any, to matters in this report must be filed with Examiner Thomas L. Wrenn, and served upon all other counsel within 5 days of the date of service shown above. [126]

Western-United Route No. 68 Sales Agreement
March 19, 1947

Western Air Lines, Inc., and United Air Lines, Inc., have applied, Docket No. 2839, under sections 401, 408, and 412 of the Civil Aeronautics Act, for an order approving an agreement dated March 6, 1947, for the sale of certain property and the transfer and amendment of the certificate of public convenience and necessity for route No. 68. Pursuant to notice to all interested parties, a prehearing conference in the proceeding was held in Room 1508, Commerce Building, at 10 a.m., March 19, 1947, at which the following were present or had appearances entered:

Appearances:

HUGH W. DARLING,
TERRILL C. DRINKWATER,
J. J. TAYLOR, and
R. C. KINSEY,
For Western Air Lines, Inc.

JAMES FRANCIS REILLY,
For United Air Lines, Inc.

HOWARD C. WESTWOOD,
For American Airlines, Inc.

LESLIE CRAVEN,
For Continental Air Lines, Inc.

S. W. RICHARDSON, and
C. E. LEASURE,
For Northwest Airlines, Inc.

JOHN W. CROSS, and
PHILLIP SCHLEITT,
For Mid-Continent Airlines, Inc.

ELIHU SCHOTT,
For Pan American Airways, Inc.

GEORGE A. SPATER,
C. E. FLEMING,
HENRY P. BEVAN, and
J. C. STRATTON,
For Transcontinental and Western Air,
Inc.

JOHN M. DICKERMAN,
For Airline Pilots' Association.

JOHN H. PRATT,
For Minneapolis-St. Paul Airport Commis-
sion.

JAMES L. HIGHSAW, JR., and
WILLIAM L. KENNEDY,
Public Counsel, and

CHARLES A. BALLOU, JR.,
Accounting and Rates Division, Civil Aero-
nautics Board.

TWA, Airline Pilots' Association, and Pan American had petitions for leave to intervene on file, American filed the day of the conference, and Northwest, Mid-Continent, and Twin Cities Airport Commission stated that petitions would be filed within five days from the date of the prehearing conference.

Public Counsel presented a statement of issues raised by the agreement, which is attached as appendix A, a tentative list of evidence requested of Western and of United, and a proposed stipulation. The applicants agreed to furnish the exhibits requested, some of which were modified and enlarged, together with certain additional items requested by some of the intervenors, including a copy of the press release announcing the agreement between Western and United. TWA, Continental, and Pan American suggested that the record in the Los Angeles-Denver case, [127] Docket No. 519, et al., be incorporated in the record in this proceeding. There was some opposition to this proposal on the grounds that counsel was not familiar with the contents of that record. It was agreed that parties will submit to public counsel a statement showing that part of the record in Docket No. 519, which they desire incorporated in this proceeding, after which public counsel will undertake to prepare a stipulation covering such material for submission to the parties. Counsel for Mid-Continent will examine the record of the North Central case, Docket No. 415, et al., to determine if Mid-Continent will request parts of it incorporated in the record of this proceeding.

There were a number of questions about Exhibit A, referred to in the Western-United Agreement. Western stated that it had not been completed, but would be available within a few days, at which time copies would be sent to all parties present.

A summary of the position and views stated by petitioners to intervene follows:

Pan American—Counsel stated that the Western-United agreement will have some impact upon Pan American's domestic route application, Docket No. 1803. While Pan American will probably oppose the agreement on this ground, it will not contend that this proceeding should be postponed until after Docket No. 1803 is decided. Pan American also believes that the agreement will have some effect upon proposals for competitive service to Hawaii, although the latter is of secondary importance in its view. Counsel stated that Pan American considers that the retention of Western as a neutral feeder to its Los Angeles-Hawaii service is of importance.

Northwest—Its interest lies principally in the course that will be followed with respect to Inland if the agreement is approved. Northwest also feels that the agreement involves the peddling of certificates, and counsel expressed the opinion that action similar to that taken by the Board in ordering investigations of Northeast and Colonial may be a proper action with respect to Western. Northwest feels that the proposed transaction is contrary to public policy and to the Civil Aeronautics Act. Northwest indicated that it will probably support

the position of the Twin City Airport Commission with respect to the desirability of one-carrier service to Los Angeles.

American—Counsel for American was unable to state any position with respect to the price involved in the transaction and probably will not be able to do so prior to the hearing. American is also interested in the effect which the proposed transaction will have on the remainder of Western's system and is interested in general questions involved: (a) How should the air transport map be remade? Should any consideration be given to pendency of bankruptcy of a carrier? (b) Should the Board [128] confer with carriers on proper consolidations, mergers, and route applications, and state a price? On the question of whether it is in the public interest for United to operate from Denver to Los Angeles, American stated that it had not opposed the merger of United and Western, or the application of United in the Denver-Los Angeles case, Docket No. 519, et al. American stated that a United route from Denver to Los Angeles makes sense from the standpoint of a national transportation system but that it makes more sense for American to be extended to San Francisco as it would provide more new service to San Francisco than United would to Los Angeles. It was American's position that if United is extended to Los Angeles and American is not extended to San Francisco, the result will be grotesque for United will be completely dominant in the west. On the question of

United receiving the Denver-Los Angeles route as a part of its route 1, American stated that if United is to have the Denver-Los Angeles route, the public should have the convenience of nonstops to and from points east of Denver. In stating this position, American referred to its pending application to consolidate its routes 30 and 4, and to current data showing that its Los Angeles-Chicago traffic as equaling that of TWA and exceeding United.

TWA—It is the position of TWA that the sale is adverse to the public interest, will create monopoly within the meaning of the Act, and will adversely affect carriers not a party to the transaction. TWA referred to the fact that it was an applicant in the original case, wherein Western represented that the route was essential to its continued existence, that since Western has now taken the opposite view the Board should not be limited to whether United can buy and Western can sell, but should be free to reexamine the mandate of public interest under the Act. Counsel requested that TWA applications, Dockets Nos. 1840 and 1841, be consolidated and heard in this proceeding. United opposes this request but if granted desires its application, Docket No. 2284, consolidated in this proceeding.

Continental—Counsel for Continental stated he had not been able to study the sales agreement and wanted time to study whether Continental would be affected more by United serving Denver-Los Angeles than by any other carrier. **He stated that the application raises the point as to how to stabilize**

smaller carriers; whether by enlargement and extension, or by consolidation. He stated that Continental has an interest in the formation of route structure which destroys routes of a carrier with which Continental conceivably could merge.

Mid-Continent—At this time, Mid-Continent does not oppose or favor the sale and may continue to maintain that neutral position. Its chief interest is in Inland, particularly the Twin Cities-Denver route. Counsel called attention to Mid-Continent's petition in Docket No. 2844, requesting suspension of Inland's recent extension from Huron to the Twin Cities. Counsel stated that he was not asking consolidation of that application with this [129] proceeding.

Minneapolis-St. Paul Airport Commission—The Commission will oppose the sale on the grounds that its approval will result in a two-carrier service instead of the one-carrier service from the Twin Cities to Los Angeles made possible by the recent extension of Inland to the Twin Cities in the North Central case.

Airline Pilots' Association—Counsel stated that his organization would seek as a condition of approval of the transaction that United take over the Western pilots now flying the route and accord them the seniority rights they now hold. Counsel indicated that he felt that Western and United and the pilots would work out some arrangement prior to a decision in this proceeding. Both Western and

United expressed willingness to confer with the pilots on the matter and it was suggested that such conference be held. In response to an inquiry by counsel for United as to whether pilots contracts covered acquisition of a route, counsel stated that he did not think contracts alone were controlling.

Public Counsel—No position with respect to the transaction was stated. Public Counsel is in favor of expediting the proceeding as much as possible principally because of the financial aspects.

In response to inquiries as to the relationship between the sales agreement and Western's financial position, Western's president stated that the sales agreement is a sound thing for Western irrespective of its financial condition and that Western's belief in this principle did not arise because of finances. He stated that as a result of the transaction, Western's financial condition has been and will be improved, but that the transaction was not a forced sale.

Counsel for TWA stated that he was on the same day filing a motion petitioning the Board to reopen the Los Angeles-Denver case, Docket No. 519, et al. Continental stated it would support the motion; Western opposed the motion; no other party indicated any position, except that American was disturbed by the dangers involved in the precedent which would be set by favorable action on the motion.

The date suggested by parties for exchange of exhibits ranged from 10 days from the date of the

conference in the case of Western to at least 60 days urged by TWA and Continental. Counsel for United urged prompt hearing stating that the case called for a little detailed preparation by interveners, that the issues were comparatively simple, with price being the major issue. Counsel for TWA stated that he regarded monopoly and the question of general Board policy as issues of greater importance than price. Counsel for Northwest stated he would be ready for hearing 20 days from the date of the conference, otherwise requested that it be heard after completion of the Pacific-Northwest-Hawaii hearing, scheduled to begin April 21. Pan American, Mid-Continent, and American stated they would be agreeable to any date selected. Western urged a quick hearing; Public Counsel stated he would like to have 2 weeks between the date exhibits were [130] received and the date of hearing. Both Western and United stated that their exhibits could be completed within 2 or 3 weeks from the date of the conference, and as soon as completed, they would furnish copies to the parties without waiting for the date of exchange in effort to expedite the proceeding.

Upon consideration of the foregoing and of future commitments of the several parties, the following dates have been designated for subsequent steps in this proceeding:

Exchange of exhibits—on or before April 24,
1947.

Hearing—May 5, 1947.

There was discussion of the applicants' request for expedited procedure in this case. Several possible methods available under the Administrative Procedure Act were suggested, but no agreement was reached with respect to any procedure. The examiner stated that a decision on the method of procedure would be made at the time of the hearing.

/s/ T. L. WRENN,
Examiner. [131]

Appendix A

Western-United Agreement—Docket No. 2839

Discussion of Issues

An examination of the agreement filed with the Board by the parties would indicate that it gives rise to the following issues under the Civil Aeronautics Act:

1. The agreement for the transfer of Western's certificate to operate over Route No. 68 must meet the test of section 401(i) of the Civil Aeronautics Act as being consistent with the public interest.

2. The agreement for the acquisition of Western's Route No. 68, and certain property and equipment of Western's may require approval under section 408(a)(2) of the Civil Aeronautics Act as the purchase of a substantial part of Western's property. If so, two questions arise:

- a. Is the purchase inconsistent with the public interest?

- b. Will the purchase result in the creation

of a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party thereto? [132]

3. Application is made also by the parties under section 412 of the Act. It would appear that the applicability of that section may be limited to the provisions of paragraph Six of the agreement relating to a loan from United to Western. Section 412 would raise two questions:

a. Is the agreement, insofar as section 412 is applicable thereto, in violation of the Civil Aeronautics Act?

b. Is the agreement, insofar as section 412 is applicable thereto, adverse to the public interest?

4. The test of the public interest under sections 401(i), 408, and 412 of the Civil Aeronautics Act relates primarily to the policy factors set forth in section 2 of the Act, and the agreement must be judged in light of those factors.

5. Amendment No. 1 of the application of Western and United requests an amendment of United's existing certificate for Route No. 1 in the event of approval of the agreement, so that Route No. 68 will become a part of Route No. 1. This raises a question of the public convenience and necessity under section No. 401(h) of the Act.

Tentative List of Evidence Requested by Public
Counsel to Be Furnished by Applicant

I. Western Airlines

(1) Financial Position

- (a) Balance Sheet as of latest date possible;
- (b) Profit and loss statement for a representative recent period;

(2) Describe briefly the business operations of Western as of March 1, 1947, including any aeronautical or other activity not covered by certificates of public convenience and necessity;

(3) Brief description of physical assets now held or being acquired, including flying equipment and ground facilities (maintenance, navigation and communication, etc.);

(4) State to whom and of what amounts Western is indebted, including manner in which debt is evidenced, whether debt is secured or guaranteed, and if so, how and by whom;

(5) Statement of operations for a representative recent period of operations by routes (a) passengers carried, (b) Revenue passenger miles flown, (c) revenue, (d) costs;

(6) Number of passengers by points of origin and destination exchanged with United at Denver and Salt Lake during representative recent period;

(7) Property to be transferred to United under agreement;

- (a) Tangible property by item;

Date of purchase, original cost, valuation for purpose of sale.

(b) Statement of each item of intangible property included in sale, value placed thereon for purpose of sale, and the basis of such valuation.

(8) Minutes of Directors Meetings or any committee thereof relating to or discussing sale;

(9) Certified copy of authorization of directors and/or stockholders for sale;

(10) Statement as to any existing negotiations and contracts for sale of any other property, tangible or intangible (including other routes) or present or contemplated plans, if any, for such sale (including Inland);

(11) Future use of personnel now assigned to operation of Route No. 68;

(12) Correspondence with any individual, partnership, or corporation other than United relating to transaction;

(13) List of banks, insurance companies, or other financial institutions holding stock in Western.

II. Relations Between the Applicants

(1) (a) Copies of all agreements, formal or informal, oral or written providing for or incidental to:

(A) Transfer of certificate of public con-

venience and necessity for Route 68 from Western to United;

(B) Transfer of any other property—tangible or intangible—from Western to United;

(C) Loan of money by United to Western.

(b) Copies of all other agreements, formal or informal, oral or written, supplementing or subsidiary to contract or contracts for transfer of the certificate for Route 68, any other property, tangible or intangible, or loan of money;

(2) Statement setting forth details of negotiations for sale of Route No. 68, and other property involved in agreement.

(3) Statement of post-sale relationships contemplated between Western and United if agreement is approved.

(4) Correspondence between United and Western relating to transaction. (Including officers and directors.)

III. United Air Lines

(1) Financial Position.

(a) Balance sheet as of most recent date possible;

(b) Profit and loss statement for representative recent period;

(c) Existing or contemplated plans for financing—copy of any statement or application filed with any stock exchange, the Securities and Exchange Commission or any other

governmental agency in connection with such financing;

(d) Banks, financial institutions, or underwriters participating in any financing.

(2) List of banks, insurance companies, financial institutions covering stock in United.

(3) Balance sheet showing the financial condition of United after the consummation of the agreement, if approved.

(4) Number of passengers for representative recent period interchanged with Western at Denver.

(5) United's plans for the operation of Route 68.

(6) Minutes of directors meetings or committees thereof relating to or discussing the transaction.

(7) Copy of authorization of directors and/or stockholders for transaction.

(8) Correspondence with any individual, partnership, or corporation other than Western relating to transaction. (Including officers and directors.)

(9) Statement showing amount of diversion resulting to any air carrier by reason of sale of Route No. 68, and consolidation with Route No. 1.

Note: Statement requested from Western under Item (4) as to operations should include a statement as to all operations over Route No. 68 since inauguration of service, particularly development expense.

Proof of Service

I hereby certify that on March 27, 1947, this document was:

1. Posted on the official bulletin board.
2. Served on all parties on attached list.
3. Served on all mailing lists.

/s/ C. F. WILLIAMS,
Chief, Docket Section.

Registered:

Hugh W. Darling, 737 Pacific Mutual Bldg.,
Los Angeles, Calif.

T. C. Drinkwater, c/o Western Air Lines, Inc.,
135 S. Doheny Drive, Beverly Hills 6, Calif.

James Francis Reilly, 726 Jackson Place, N.W.,
Wash., D. C.

Leslie Craven, Willkie, Owen, etc., 15 Broad St.,
New York, N. Y.

Sheldon Cooper, Cooper, White & Cooper,
Crocker Bldg., San Francisco, Calif.

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Wall St., New York, N. Y.

George A. Spater, Chadbourne, Wallace, etc.,
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Albert Beitel, Morris, Kix, Miller & Baar,
American Security Bldg., Wash., D. C.

John M. Dickerman, Airline Pilots' Assn., 1185
National Press Bldg., Wash., D. C.

Regular:

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John T. Lorch, Mayer, Meyer, etc., 231 S. La-
Salle St., Chicago 4, Ill.

Paul M. Godehn, Mayer, Meyer, etc., 231 S.
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K St., N.W., Wash., D. C.

Miss Carlene Roberts, 1437 K St., N.W., Wash.,
D. C.

Edwin McElwain, 701 Union Trust Bldg.,
Wash., D. C.

Continental Air Lines, Inc., Att: Robert Pur-
cell, Stapelton Airfield, Denver, Colo.

S. B. Redmond, Continental Air Lines, Inc.,
550 Equitable Bldg., Denver 2, Colo.

Robert G. Thach, 534 Woodward Bldg., Wash.,
D. C.

Pan American Airways, Inc., Att: Henry J.
Friendly, 135 E. 42nd St., New York, N. Y.

Mrs. A. M. Archibald, c/o Pan American Airways, Inc., 815 15th St., N.W., Wash., D. C.
J. Howard Hamstra, c/o Pan American Airways, Inc., 135 E. 42nd St., New York, N. Y.
TWA, Att: Paul E. Richter, 101 W. 11th St., Kansas City 6, Mo.

G. E. Fleming, c/o TWA, Hangar # 2, Washington National Airport, Washington, D. C.
Oppenheimer, Hodgson, Brown, Donnelly & Baer, First Nat'l Bank Bldg., St. Paul, Minn.
Phillip Schleit, c/o Denning and Cross, 1518 K St., N.W., Wash., D. C.

Henry P. Bevan, Chadbourne, Wallace, etc., 25 Broadway, New York, N. Y.

J. C. Stratton, c/o TWA, Hangar # 2, Wash. National Airport, Wash., D. C. [136A]

Special Messenger:

R. S. Burgess—POD.

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Bulletin Board.

Docket Section.

Stough.

Leasure.

Examiner: Wrenn, B-101.

Public Counsel: Highsaw, B-38; Kennedy, B-38.

Charles A. Ballou, Jr., B-74.

No Special Mail Cards.

Inter-Office Distribution. [136B]

United States of America, Civil Aeronautics Board

[Title of Cause.]

TRANSCRIPT OF HEARING

Tuesday, May 20, 1947

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m., before Thomas L. Wrenn, Examiner.

Appearances:

HUGH W. DARLING,
737 Pacific Mutual Building,
Los Angeles, California,

Appearing on Behalf of Western Air
Lines, 135 South Doheny Drive, Beverly Hills, California.

JAMES FRANCIS REILLY,
726 Jackson Place, N.W.,
Washington 6, D. C.,

Appearing on Behalf of United Air
Lines, Inc., 5959 South Cicero Avenue, Chicago 38, Illinois.

H. C. WESTWOOD,
701 Union Trust Building,
Washington, D. C.,

Appearing on Behalf of American Air
Lines, Pershing Square, New York,
N. Y.

SHELDON G. COOPER,
701 Crocker Building,
San Francisco, California;

C. EDWARD LEASURE,
Woodward Building,
Washington, D. C., and

S. B. REDMOND,
Equitable Building,
Denver, Colorado,

Appearing on Behalf of Continental
Air Lines, Stapleton Airfield, Den-
ver, Colo.

PHILIP SCHLEIT, and
JOHN W. CROSS,
1625 K. Street, N.W.,
Washington, D. C.,

Appearing on Behalf of Mid-Continent
Airlines, Kansas City.

SETH RICHARDSON,
815 15th Street, N.W.,
Washington, D. C.,

Appearing on Behalf of Northwest
Airlines, St. Paul, Minnesota.

J. HOWARD HAMSTRA,
135 East 42nd Street,
New York, N. Y.,

Appearing on Behalf of Pan American
Airways, Inc., 135 East 42nd Street,
New York, N. Y.

GEORGE A. SPATER, and
JOSEPH S. ISEMAN,

25 Broadway, New York, N. Y.,

Appearing on Behalf of Transcon-
tinental & Western Air, Inc., 101
West 11th Street, Kansas City Mis-
souri.

JOHN H. PRATT,

905 American Security Building,
Washington, D. C.,

Appearing on Behalf of Minneapolis-
St. Paul Metropolitan Airport Com-
mission, 2429 University Avenue, St.
Paul, Minnesota.

FRED O. MUNCH,

3145 West 63rd Street,
Chicago, Illinois,

Appearing on Behalf of Air Line
Pilots' Association, 3145 West 63rd
Street, Chicago, Illinois.

JAMES L. CRAWFORD,

1015 Vine Street,
Cincinnati, Ohio, and

HARTMAN BARBER,

Room 301, 10 Independence Ave., S.W.,
Washington, D. C.,

Appearing on Behalf of the Brother-
hood of Railway Clerks, 1015 Vine
Street, Cincinnati, Ohio.

GLEN B. EASTBURN,
1151 South Broadway,
Los Angeles 15, California, and

JOHN M. COSTELLO,
1411 Pennsylvania Avenue,
Washington 4, D. C.,

Appearing on Behalf of the Los Angeles Chamber of Commerce.

JAMES L. HIGHS AW, JR., and
WILLIAM F. KENNEDY,

Public Counsel. [163]

Proceedings

Mr. Crawford: Mr. Examiner, at this time, may we have our appearance entered? My name is James L. Crawford, and this is Mr. Hartman Barber.

Examiner Wrenn: For whom are you appearing?

Mr. Crawford: Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees.

Examiner Wrenn: I didn't get all that.

Mr. Crawford: Just refer to us as the Brotherhood of Railway Clerks.

Examiner Wrenn: You are entering an appearance under——

Mr. Crawford (Interposing): 285.6 of Paragraph (a). [164]

TERRELL C. DRINKWATER

the witness on the stand at the time of taking the noon recess, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Highsaw: [239]

* * *

Q. Turning to the question of the use of the personnel employed on route 68.

A. Yes, question 8 on page 10.

Q. Is that page 10? A. Yes.

Q. When you say there that you intend to absorb substantially all of the personnel, I just wondered why the qualification.

A. Of substantially?

Q. Yes.

A. Because we have too many people in most places in Western Airlines, and we are trying to reduce our overhead, and reduce the number of employees wherever we can. I did not want to say that we would absorb them all because as we get further into the situation, we may find we have too many folks, but generally speaking we know we will need at least 14 flight crews to fly between San Francisco and Seattle, to say nothing of Mexico City. We know we will [267] need larger station complement at Portland, for instance, than we have at Grand Junction, and we know we will need station personnel at Seattle, in number and experience and

(Testimony of Terrell C. Drinkwater.)

classifications which will certainly be analogous to our present personnel in Denver.

Q. You estimate what percentage of your personnel will probably be taken over?

A. Percentage of what personnel?

Q. The personnel on route 68 now.

A. You mean Denver, Grand Junction and the pilots?

Q. Yes.

A. All of the flight crews, 100 per cent of the flight crews, and I suppose, well, everybody in Grand Junction who wants a job, we are going to give them a job, and everybody in Denver who wants a job that is a competent person, is going to get a job. We have to leave some people in Denver to operate Inland Airlines, of course. But aside from the general reduction in personnel which is still going on in Western Airlines, we would take care of all of these people.

Q. Would this reduction in the personnel on route 68 be made regardless of whether the sale were approved?

A. Yes. It is the same program that is going on on routes 13, 19, 63, 52 and 6.

Q. Then actually you intend to absorb all of the personnel that you would have kept anyway?

A. Subject to that qualification, yes.

Q. If you are unable to absorb any of the personnel who might be left jobless as the result of this sale, do [268] you have any plans with respect to taking care of that personnel?

(Testimony of Terrell C. Drinkwater.)

A. Well, there won't be any. The last question covers that.

Q. Well, you have no plans, then, because you don't contemplate any?

A. That is right. As a matter of fact, we will need more people probably. I am sure we will need more people. We will need more people to staff up in Portland and Seattle than we presently have in Denver and Grand Junction, let us put it that way.

Q. Have you discussed with United at all the question of taking over any of Western's personnel?

A. No.

Q. How would you feel about the Board putting conditions on any order of approval that it might issue relating to severance pay and cost of people moving who might be dropped as the result of this route transfer?

A. Well, I would not think that the Board would care to state how many employees an airline should have at a given station. It seems to me that would be a matter within the discretion of management of an airline.

But if the Board sees fit and thinks that it has the power to put such restrictions in any approval, why, we would not object to it, except on the matter of broad principles, as I have just said, that I don't think that the Board should undertake to tell each carrier how many people they should put at each station or for what purpose.

Examiner Wrenn: Is that what you meant, or did you [269] have reference to personnel who

(Testimony of Terrell C. Drinkwater.)

might want to be transferred, and there would be moving expense?

Q. (By Mr. Highsaw): I have both in mind.

A. We pay the moving expenses. Every airline in the country does that. When you transfer them, you pay their moving expenses.

Q. With respect to any personnel that was dropped as the result of the route sale, you don't think the Board should put any restrictions on that, but you would accept them if any conditions were put in.

A. Well, it depends on what they were, but the question is entirely academic because there are not going to be any personnel dropped as the result of route sale. There may be some dropped because they are incompetent, or we have too many folks, but not any dropped because of the route sale.

Q. These questions that I have regarding the balance sheet, and everything, I assume it would be more profitable to go into those with Mr. Taylor.

A. Yes.

Mr. Highsaw: I believe that is all, Mr. Examiner.

Examiner Wrenn: Airline Pilots Association, do you have any questions?

Cross-Examination

By Mr. Munch:

Q. This may seem repetitious in view of what

(Testimony of Terrell C. Drinkwater.)

has been brought out, but what now is your position regarding the pilots on this division? [270]

A. As this statement here reads, Mr. Munch, we have every intention of keeping every one of the 14 flight crews presently operated on route 68 in the event the Board approves this transaction, and transferring them, subject to their seniority list and their rights to bid, to the extended operation of route 63, San Francisco-Portland-Seattle.

I have had a series of meetings with all of our pilots, three different meetings, in order to meet with everybody in the flight department, and have gone over this whole thing carefully with them, and explained that if the Board granted our extension of route 63 to Seattle, that was our intention.

There was no question raised about that program in the event that the Board granted that extension.

The Board yesterday did grant it, so I assume that takes care of your question.

Q. In other words, there are more or less guarantees.

A. That is true, and as a matter of fact, we will need more flight crews than the 14. [271]

* * *

Mr. Crawford: I wanted to make this statement, Mr. Examiner. This morning when we announced our appearance, that we were appearing under Section 285, which is paragraph (A), I don't think at that time that we stated our position although

(Testimony of Terrell C. Drinkwater.)

I think it was understood that our position is that the Civil Aeronautics Act confers authority upon the Board to impose conditions to protect the employees who may be adversely affected.

I notice in paragraph (A) it provides that coming under this Section, we may also suggest questions or interrogatories to Public Counsel. Mr. Highsaw has propounded substantially the questions we would have propounded but in addition it also provides that we may present any evidence which is relevant to the issue. In lieu thereof, I ask this privilege that we may file a memorandum or brief in which we can state in more detail the position which we take in support of our position the same as that of the other parties.

Examiner Wrenn: All right, Mr. [289] Crawford.

* * *

W. A. PATTERSON

was called as a witness for and on behalf of United Air Lines, Incorporated, and having been duly sworn was examined and testified as follows: [290]

Q. On the subject of employees of Western engaged on Route 68, is it the intention of United to hire any of these employees?

A. No; and I judge from Mr. Drinkwater's testimony yesterday that there is no problem, and I certainly would feel that there was no problem because with this Seattle extension he has just

(Testimony of W. A. Patterson.)

gotten, I would judge that he needs more people than he has for that route.

If he hadn't been awarded that decision, we would [347] probably have a problem here today, but I don't see it. [348]

* * *

By Mr. Munch:

Q. Mr. Patterson, I take it your position with regard to these pilots to you presents no problem at all; is that right? A. It never did.

Q. Is United assuming any of the obligations of Western in this agreement?

A. No; we assume no obligations of Western in the agreement.

Q. In the course of your negotiations with Mr. Drinkwater, did you ever consider that it might be well to consult the Air Line Pilots Association?

A. Yes. I talked to the council man in Los Angeles of the Air Line Pilots Association, chairman of the council of the United Air Lines and told him what the transaction was all about and he, in turn reported to headquarters.

Q. You know definitely he did report to headquarters?

A. Yes; and I have a letter from Mr. Bencke asking for my views, and I expressed my views to Mr. Bencke. [349]

* * *

FRED O. MUNCH

was called as a witness, for and on behalf of Air-line Pilots Association, and having been duly sworn was examined and testified as follows:

Direct Examination

The Witness: I wish to make a statement which will clarify the position that the Air Line Pilots Association takes in the matter of the purchase of Route 68.

We feel that regardless of whether it is a merger, purchase, consolidation or any other form of acquisition by one air line of another air line or a part thereof, the air line pilots flying on such air line or part thereof must not have their employment or seniority rights disturbed, impaired, or destroyed in any way. In every case in the past where there has been a merger, acquisition, or consolidation [433] of air lines, or parts thereof, the pilot problem involved, both as to protection of seniority rights and continued employment, has been dealt with in such a manner that employment and seniority rights were not affected and were left unimpaired.

We feel that there shouldn't be any difference or distinction made in the handling of the pilots' rights in this purchase of Route 68 by United. Here we have a large part of an air line that is taken over by another air line on which part there are 15 first pilots and 15 co-pilots and one reserve crew—all of whom will be directly affected by this purchase and which in turn will affect all

(Testimony of Fred O. Munch.)

Western pilots. It is only natural for the purchaser to feel that there is no pilot personnel problem involved but this assumption does not take into consideration the rights of the pilots involved.

The stand of the Air Line Pilots Association is that whether it be by purchase or any other means of acquisition, the pilots must be acquired in the same sense that all of the assets and liabilities are acquired or it certainly cannot be in the public interest.

The Air Line Pilots Association has no desire to oppose this purchase of Route 68 by United provided the pilots and co-pilots now flying this division are taken over by United and given seniority as of the date of their original employment with Western, and moreover, that such pilots shall not be dealt with unfairly, and that their continued employment with the purchasing company shall not be endangered or prejudiced in any manner. If this purchase [600] is approved without the rights of the Western pilots being safeguarded then it will amount to a wrongdoing that will establish a precedent that will do untold harm.

The pilots of both the companies concerned, United and Western, are represented by the Air Line Pilots Association, and both groups are covered by employment agreements made pursuant to the provisions of the Railway Labor Act. The position that the pilots association takes in this matter is not inconsistent with these employment agreements.

(Testimony of Fred O. Munch.)

Considering for a moment the legal aspects of the position we are taking, you will find that Section 401 (L), paragraph 4, of the Civil Aeronautics Act requires that:

“It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with Title II of the Railway Labor Act as amended.”

In turn Title II of the Railway Labor Act extends the provisions of Title I except Section 3 to air carriers—and Section 2 of Title I states:

“It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees [601] thereof.”

Pursuant to and in furtherance of the objectives of this legislation, United, Western and the respective pilot groups represented by the Air Line Pilots Association have entered into employment agreements.

Our employment agreements state:

Section 17 (a) Seniority of a pilot shall be based upon the length of service of a pilot with

(Testimony of Fred O. Munch.)

the company or with other companies whose operations have been taken over by the company, prior to the signing of this agreement.

(b) Seniority shall begin to accrue from the date a pilot is first assigned to a division for air line flying duty and shall continue to accrue during such period of duty.

(c) Seniority shall govern all pilots in case of promotion and demotion, their retention in case of reduction in force, their assignment or reassignment due to expansion or reduction in schedules, their re-employment after release due to reduction in force, and their choice of vacancies, provided that the pilot's qualifications are sufficient for the conduct of the operation and in the event that a pilot is considered by the company not to be sufficiently qualified the company shall immediately furnish such pilot written reasons therefor. This section shall apply unless otherwise specifically excepted by some other provision in this agreement.

In view of the existing employment agreements, the existing legislation, and the nature of the property right involved, we feel that this is a very important issue and one that must be decided and agreed upon by both groups [602] of pilots as well as United and Western Air Lines. Because of this, we ask that the Board hold the entire matter in abeyance until a fair and equitable solution has been worked out to the satisfaction of the pilots and companies. We estimate that to do so will take a minimum of 30 and possibly 60 days.

(Testimony of Fred O. Munch.)

This will not work a hardship on the public for this is not a matter of beginning a new and much needed service but purely the transfer of the management of an existing operation.

In the event the Board cannot see fit to hold this matter in abeyance pending a fair solution to this pilot problem, we can then take but one position and that is the purchase of Route 68 should not be approved. In short, we are asking for an ample opportunity for the provisions of the C.A.A. and the R.A.L. to be carried out both in letter and in spirit.

Examiner Wrenn: Mr. Darling?

Mr. Darling: I have a few questions.

Cross-Examination

By Mr. Darling:

Q. Mr. Munch, regarding this statement which you have just made for the record, did you consult the Western Air Lines Pilots?

A. The President of the Association has consulted with them.

Q. But you don't know the outcome of that consultation? A. No, I do not.

Q. Therefore, you do not know whether or not the [603] statements which you have just read into the record correctly reflect the wishes or the will of the Western Air Lines pilots who are presently assigned to Route 68?

A. That statement is the position of the Asso-

(Testimony of Fred O. Munch.)

ciation and Western's pilots are members of that Association.

Q. To be a little more specific, you do not know whether the statement does reflect the wishes and the will of a majority or any of Western's pilots presently assigned to Route 68? A. No.

Mr. Darling: That is all.

Examiner Wrenn: Any further questions?

Mr. Reilly: I have one or two questions.

Cross-Examination

By Mr. Reilly:

Q. Mr. Munch, do you know whether or not there was a meeting of the Executive Council of the Air Line Pilots Association instructing that this position be taken? A. I do not know.

Q. Do you know whether the UAL counsel in California was consulted with respect to the position of Mr. Behncke of the Air Line Pilots Association in this matter?

A. That I do not know either.

Q. You don't know whether there was a meeting of the Executive Council specifically on this question, do you? A. No, I do not know.

Q. When did Mr. Behncke authorize you to state this position?

A. Monday, May 19. [604]

Mr. Reilly: That is all.

Mr. Darling: May I ask one or two more questions?

Examiner Wrenn: Yes.

(Testimony of Fred O. Munch.)

Further Cross-Examination

By Mr. Darling:

Q. Are you aware of the fact that Mr. Drinkwater, the President of Western Air Lines has had a conference with the pilots of Western Air assigned to Route 68 and the pilots have indicated a very strong indication that they would be very happy to transfer to Route 68 and operate up to Seattle—Route 63?

A. As I recollect, the testimony, he did mention that fact.

Q. But you are not aware of that fact?

A. I am not aware of whether the pilots have agreed to that.

Examiner Wrenn: If there are no further questions the witness may be excused.

* * *

Received May 23, 1947. [605]

WESTERN EXHIBIT WT-1

Docket 2839

Direct Testimony of Terrell C. Drinkwater

1. Q. When did you become president of Western Air Lines, Inc.? A. January 1, 1947.

2. Q. Prior to that time, had you ever been an officer or employee of Western Air Lines?

A. No.

3. Q. Briefly, what airline experience had you had prior to your association with Western Air Lines?

A. From September, 1942, to September, 1944, I was Executive Vice President, General Manager and Director of Continental Air Lines. Prior to that I had for some time been a Director and General Counsel of Continental Air Lines. From September, 1944, to January, 1947, I was Vice President of American Airlines and for a portion of that period was likewise Vice President and a Director of American Overseas Airlines, Inc.

4. Q. Did you have anything to do with the formulation of policy for Western Air Lines prior to the time you took office as its president?

A. No. [806]

* * *

8. Q. What will be done with the personnel now assigned to the operation of Route 68 when the Board approves this agreement?

A. We intend to absorb substantially all the personnel presently assigned to Route 68 in the operation of a route between Seattle and San Francisco if the Board sees fit to award us that extension. We presently have 14 flight crews operating Route 68 between Denver and Los Angeles and we estimate that we need at least this number of flight crews to provide service to Portland and Seattle to say nothing of our contemplated service to Mexico City, which will require additional flight

crews. With respect to ground personnel in both Denver and Grand Junction, aside from those personnel presently in Denver and devoting their attention to the Inland operation, we expect to be able to utilize such personnel in Portland or Seattle or in other places on Routes 13, 19, 52 and 63. [815]

UNITED EXHIBIT UAL-T1

Docket No. 2839

Direct Testimony of United's Witnesses

In the Matter of:

The Application of WESTERN AIR LINES, INC., and UNITED AIR LINES, INC., Under Sections 401, 408 and 412 of the Civil Aeronautics Act of 1938, as Amended, for an Order Approving an Agreement for the Sale of Certain Properties and the Transfer and Amendment of the Certificate of Convenience and Necessity for Route No. 68.

Direct Testimony of W. A. Patterson, President,
United Air Lines, Inc.

Cab Docket No. 2839

* * *

Q. Are there any agreements, formal or informal, oral or written, supplementing or subsidiary to the contract between United and Western, dated March 6, 1947, a copy of which is Exhibit U-4 in this proceedings? A. No. [1077]

* * *

Before the Civil Aeronautics Board

[Title of Cause.]

PETITION FOR AN ORDER UNDER SECTION 8(a) OF THE ADMINISTRATIVE PROCEDURE ACT AND UNDER SECTION 285.8(c) OF THE RULES OF PRACTICE OF THE CIVIL AERONAUTICS BOARD FOR AN ORDER OMITTING A RECOMMENDED DECISION OF THE EXAMINER OR A TENTATIVE DECISION OF THE BOARD AND CERTIFYING THE ENTIRE RECORD TO THE BOARD FOR INITIAL DECISION WITHOUT [1240] BRIEFS

Petitioner, Western Air Lines, Inc., respectfully
represents: [1241]

* * *

IV.

The facts and circumstances, contained in or implicit from the record of the above-captioned proceeding, which support favorable findings and a favorable order in response to this petition are:

* * *

(e) On May 19, 1947, in the West Coast Case, Docket No. 250, Petitioner's Route 63 between Los Angeles and San Francisco, California, was amended by adding an extension to Seattle, Washington, via Portland, Oregon. Petitioner intends to transfer to the operation of extended Route 63, flight crews now assigned to Route 68. (Tr. p. 381)

This will obviate any restiveness among Petitioner's flight crews and will enable Petitioner to take advantage of the benefits stemming from the retention of its own employees. Petitioner intends to activate the new extension of Route 63 expeditiously and any delay in the initial decision will be prejudicial to Petitioner's operations and planning and adverse to the public interest. [1242]

* * *

Respectfully submitted,

WESTERN AIR LINES, INC.,

By /s/ TERRELL C. DRINKWATER,
President.

GUTHRIE, DARLING &
SHATTUCK,

Attorneys for Western Air
Lines, Inc.

Filed May 23, 1947. [1243]

United States of America Civil Aeronautics Board
[Title of Cause.]

ORDER No. E-598

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 6th day of June, 1947

The applicants, Western Air Lines, Inc., and
United Air Lines, Inc., having filed motions for an

order under section 8(a) of the Administrative Procedure Act and Section 285.8(c) of the Board's Economic Regulations certifying the record in this proceeding to the Board for initial decision and for other relief; and

It Appearing to the Board, That no one of the interveners in this proceeding has objected to so much of the foregoing motions as requests the omission of a recommended decision by the Examiner and of a tentative decision by the Board and of exceptions thereto; and

The Board finding upon the record in this proceeding that the due and timely execution of its functions imperatively and unavoidably requires the omission of a recommended decision by the Examiner and of a tentative decision by the Board and of exceptions thereto; [1258]

It Is Ordered:

1. That the Examiner in this proceeding be and he hereby is directed to certify the entire record herein to the Board for initial decision;
2. That a recommended decision by the Examiner and a tentative decision by the Board and exceptions thereto be and they hereby are omitted;
3. That the applicant, interveners and Public Counsel be and hereby are permitted to file with the Board proposed findings and conclusions and supporting reasons therefor, or briefs in lieu of such proposed findings and conclusions and supporting reasons on or before a date designated by the trial Examiner;

4. That oral argument before the Board be held at a time hereafter to be announced; and

5. That no exceptions will be received to the initial decision of the Board.

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,
Secretary. [1259]

Proof of Service

I hereby certify that on June 6, 1947, this document was:

1. Posted on the official bulletin board.
2. Served on all parties on attached list.
3. Served on all mailing lists.

/s/ C. F. WILLIAMS,
Chief, Docket Section.

Registered:

Western Air Lines, Inc., Att: Paul E. Sullivan,
135 S. Doheny Drive, Beverly Hills, Calif.

United Air Lines, Inc., Att: S. P. Martin, 5959
S. Cicero Ave., Chicago 38, Ill.

Regular:

American Airlines, Inc., Att: C. W. Jacob,
1437 K St., N. W., Wash., D. C.

T. W. A., Att: Secretary, 101 W. 11th St.,
Kansas City 6, Mo.

Pan American Airways, Inc., Att: Henry J.
Friendly, 135 E. 42nd St., New York, N.Y.

Mid-Continent Airlines, Inc., Att: J. W. Miller,
102 East 9th St., Kansas City, Mo.

Northwest Airlines, Inc., Att: A. E. Floan,
1885 University Ave., St. Paul, Minn.

Minneapolis-St. Paul Airport Commission, c/o
Albert Beitel, Morris, Kix, Miller & Baar,
American Security Bldg., Wash., D. C.

Air Lines Pilots Assn., Att: David L. Bencke,
3145 E. 53rd St., Chicago, Ill.

Continental Air Lines, Inc., Att: Robert Purcell,
Stapleton Airfield, Denver, Colo.

Miss Carlene Roberts, 1437 K St., N. W.,
Wash., D. C.

Howard C. Westwood, 701 Union Trust Bldg.,
Wash., D. C.

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Washington National Airport, Wash., D. C.

Henry P. Bevan, Chadbourne, Wallace, etc.,
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Washington National Airport, Wash., D. C.

Elihu Schott, c/o Cleary, Friendly & Cox, 52
Wall St., New York, N.Y.

Mrs. A. M. Archibald, c/o Pan American Airways, Inc.,
815 15th St., N. W., Wash., D. C.

J. Howard Hamstra, c/o Pan American Airways, Inc.,
135 E. 42nd St., New York, N.Y.

John W. Cross, 1625 K St., N. W., Washington,
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Philip Schleit, 1625 K St., N. W., Washington,
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Seth W. Richardson, Bowen Bldg., 815 15th
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Robert G. Thach, 1518 K St., N. W., Washington,
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C. Edward Leasure, 1518 K St., N. W.,
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Oppenheimer, Hodgson, Brown, Donnelly &
Baar, First Nat'l Bank Bldg., St. Paul,
Minn.

Hugh W. Darling, 737 Pacific Mutual Bldg.,
Los Angeles, Calif.

James Francis Reilly, 726 Jackson Place.,
Wash., D. C.

Sheldon Cooper, Cooper, White & Cooper, 701
Crocker Bldg., San Francisco, Calif.

Ronald C. Kinsey, Western Air Lines, Inc., 206
Shoreham Bldg., Wash., D. C.

John T. Lorch, Mayer, Meyer, etc., 231 S.
LaSalle St., Chicago, Ill. [1256]

Paul M. Godehn, Mayer, Meyer, etc., 231 La-
Salle St., Chicago, Ill.

Research Dept., c/o United Air Lines, Inc.,
5959 S. Cicero Ave., Chicago, Ill.

T. C. Drinkwater, Pres., Western Air Lines,
Inc., Carlton Hotel, Wash., D. C.

S. B. Redmond, Continental Air Lines, Inc.,
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John H. Pratt, 905 American Security Bldg.,
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Fred O. Munch, 3145 W. 63rd St., Chicago, Ill.

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geles 15, Calif.

John M. Costello, 1411 Penna. Ave, Wash.,
D. C.

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Bulletin Board

Docket Section

Stough

Examiner: Wrenn B-101

Public Counsel: Highsaw B-38 Kennedy B-38

Charles A. Ballou B-47 [1257]

United States of America, Civil Aeronautics Board
[Title of Cause.]

BRIEF IN BEHALF OF THE BROTHER-
HOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EX-
PRESS AND STATION EMPLOYEES

* * *

Conclusion

In conclusion we submit that no reasonable distinction can be drawn between the language of the respective sections contained in the Civil Aeronautics Act and the Interstate Commerce Act as the latter read prior to its 1940 Amendments and at the time of the United States Supreme Court's decision thereon; or between the authority conferred upon the Civil Aeronautics Board and Interstate Commerce Commission.

The phrases "public interest" and "public convenience and necessity" are indistinguishable in meaning. Both contemplate [1491] that the making of administrative decisions shall be guided by consideration of public interest and welfare. The decisions of the United States Supreme Court establishes that employee's protection is a phase of the public interest and welfare which may be appropriately considered in consolidations, mergers, or acquisitions of control, purchases, etc. The Civil Aeronautics Board, therefore, has complete jurisdiction and authority to protect the employees' interest involved in this proceeding, since it appears

that there is a possibility of adverse effect upon employees herein involved. We submit that the Board should exercise its statutory authority by imposing the conditions for their protection, as herein submitted.

Respectfully submitted,

/s/ JAMES L. CRAWFORD,

Attorney for Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. [1492]

United States of America, Civil Aeronautics Board

Docket No. 2839

WESTERN-UNITED, ACQUISITION OF AIR
CARRIER PROPERTY

OPINION AND ORDER

1. In passing upon the application of an air carrier for approval of a proposed acquisition of the property and business of another air carrier, the Board is not called upon to fix and determine the price that shall be paid, but to determine whether the agreed price is of such an amount and character as to affect adversely the interests of the buyer, the seller, or the public. (pp. 26, 27.)

2. While it would be exceeding the bounds of realism to deny that as between a buyer and a seller of air carrier properties, the purchase price may

include intangibles representing an appraisement of future earning power, the Board will not permit such intangibles to enter the investment of the purchasing carrier for rate-making purposes or otherwise to burden that carrier's rates with charges for the recoupment of the cost of such intangibles. (p. 29.)

3. Where the record shows that the price agreed upon by the air carrier parties to an acquisition was reached in negotiations conducted at arm's length by men of experience, ability, and knowledge of the air transport business and free from any suggestion of collusive or fraudulent purpose, and that the price is not unreasonable when judged by the standards of the commercial market; that that part of the price representing intangible value is not disproportionately large; and that its payment will not impair the operating efficiency of the purchasing carrier, or weaken its financial position or future earning power, no basis exists for a finding that the purchase price will be adverse to the public interest. (pp. 30-37.)

4. The market valuation of an air carrier property and business which is being transferred from a seller to a purchaser is essentially an appraisal of prospects for successful operation in the future, and it does not follow that the future earning power of such a property is controlled by the original cost of the individual items of which the property is composed. (p. 37.) [1739]

5. An acquisition of part of an air carrier's

property and business is held not to affect adversely the public interest where the following conditions are fulfilled: (1) that the investment value for rate-making purposes of the properties acquired by the purchasing carrier will not be augmented by reason of the transfer, and (2) that the entire excess of the purchase price over the investment value for rate-making purposes of the properties transferred, as measured by the original cost less allowable depreciation, shall be charged to surplus upon the books of the purchasing carrier at the time of the transfer. (p. 38.)

6. The view that notwithstanding any protective conditions that may be imposed by the Board to prevent the intangible elements in the purchase price from finding their way into the carrier's rates, thereby burdening the public users of the service, appears to rest upon assumptions that are at war with realities. (pp. 40, 41.)

7. To assume that under the established method of rate-making, the rates which the Board fixes will, by reason of the mathematical accuracy of the estimates upon which the rates must rest, invariably result in a mathematically reasonable rate of return at all times on each carrier's investment, or that the exact rate of return necessary to attract capital can be precisely determined for the industry and for each individual air carrier is to assume a degree of precision in the rate-making process which is unattainable in the world of reality. (p. 42.)

8. Due to the inevitable differences between air

carriers—differences in their size and strength, the integrational advantages under which they operate, the amount of competition to which they are subjected, and the differences which exist between the ability and efficiency of their respective managements—the uniform rates which prevail in a competitive industry such as air transportation do not and should not yield the same rate of return to all carriers subject to them. (p. 42.)

9. If a purchasing carrier, relying upon its managerial ability and the integrational advantages which it will enjoy from the operation of the property and business which it is purchasing, believes that it will be able to reap a better than average return under the fair and reasonable rates fixed by the Board, such carrier should be allowed to pay a reasonable sum for that opportunity when the public interest will not be adversely affected by such action. (p. 44.)

10. The regulatory policy to which the Board and other public utility regulatory bodies of the national and state governments have adhered and which recognizes reasonable market value with its ever-present intangible elements as the basis for exchange transactions, but which refuses to allow such intangibles to be reflected in rates, cannot adversely affect the public users of the service. (p. 46.) [1740]

11. If successful air carrier properties are not recognized by the Board as having a reasonable market value for acquisition purposes which is

somewhat in excess of the investment value of the properties for rate-making purposes, the owner of such properties will have no incentive to transfer them to another air carrier who would be in a position to operate them with greater advantage to the public interest; and the effect of such a policy would be to "freeze" the air pattern of the nation to its present design and thereby frustrate needed improvements in that pattern. (p. 47.)

12. The effect of price upon the public interest in transactions involving the transfer of air carrier property must be determined by the facts of the particular case and no inflexible rule outlawing intangibles from such exchange prices can act as a substitute for sound judgment based upon analysis of the evidence of record in the case being decided. (p. 49.)

13. As in the past, the Board will continue to scrutinize with care the prices agreed upon by parties to the transfers of air carrier properties to make sure that such prices are not unreasonable by the standards of sound commercial value, that they will not have a detrimental effect upon the air carriers involved and will not otherwise adversely affect the public interest. (p. 49.)

Decided: August 25, 1947.

Appearances:

HUGH W. DARLING,

For Western Air Lines, Inc.

J. FRANCIS REILLY,

For United Air Lines, Inc.

HOWARD C. WESTWOOD,

For American Airlines, Inc.

SHELDON G. COOPER,

C. EDWARD LEASURE, and

S. B. REDMOND,

For Continental Air Lines, Inc.

PHILIP G. SCHLEIT,

For Mid-Continent Airlines, Inc.

S. W. RICHARDSON, and

C. EDWARD LEASURE,

For Northwest Airlines, Inc.

J. HOWARD HAMSTRA,

For Pan American Airways, Inc.

GEORGE A. SPATER, and

JOSEPH A. ISEMAN,

For Transcontinental and Western Air, Inc.

JOHN H. PRATT,

For Minneapolis-St. Paul Airport Commission.

FRED O. MUNCH,

For Air Line Pilots Association.

GLENN A. EASTBURN,

For Los Angeles Chamber of Commerce.

JAMES L. HIGHS AW, JR., and

WILLIAM F. KENNEDY,

Public Counsel. [1741]

Opinion

By the Board:

This proceeding involves an application of Western Air Lines, Inc. (Western), and United Air Lines, Inc. (United), filed under sections 401, 408, and 412 of the Civil Aeronautics Act, requesting (1) approval of an agreement between Western and United, dated March 6, 1947, providing for (a) transfer by Western to United of the certificate of public convenience and necessity held by Western for route No. 68, and (b) sale by Western to United of certain aircraft, engines, spare parts, material and supplies, leaseholds, and other properties; (2) if the transfer of route No. 68 is approved, that the certificate when reissued to United contain a restriction prohibiting United from carrying local traffic between Las Vegas, Nev., and Los Angeles, Calif.; and (3) consolidation of route No. 68 with United's route No. 1, if the transfer of the certificate is approved.

American Airlines, Inc.; Continental Air Lines, Inc.; Mid-Continent Airlines, Inc.; Northwest Airlines, Inc.; Pan American Airways, Inc.; Transcontinental and Western Air, Inc.; Air Line Pilots Association, Minneapolis-St. Paul Airports Commission, and Los Angeles Chamber of Commerce were granted permission to intervene. After notice to all interested parties and the public, a hearing was held before Examiner Thomas L. Wrenn. Pursuant to motions of Western and United the Board by order dated June 6, 1947, directed the Examiner

to certify the record to the Board for initial decision and permitted all parties to file briefs with the Board and present oral argument.

Western holds certificates of public convenience and necessity for routes Nos. 13, 19, 52, 63, 68, and for a route between Los Angeles and Mexico City, D. F., via San Diego and La Paz. Its subsidiary, Inland Air Lines, Inc., holds certificates for routes Nos. 28 and 35. A description [1742] of Western's system is set forth in a footnote.¹ United's route No. 1 traverses the continent between the western terminals of Seattle, Oakland-San Francisco, and Los Angeles, and the eastern terminal points of Washington, New York-Newark, and Boston, via various intermediate points, including Chicago and

¹Western's route No. 13 between the terminal point, San Diego, Calif.; the intermediate points El Centro, Calif.; Yuma, Ariz.; Palm Springs, San Bernardino, Long Beach, and Los Angeles, Calif.; Las Vegas, Nev.; St. George, Cedar City, and Richfield, Utah, and the terminal point Salt Lake City, Utah. Route No. 19 between the terminal point Salt Lake City; the intermediate points Ogden and Logan, Utah; Pocatello and Idaho Falls, Idaho; Jackson, Wyo.; West Yellowstone, Butte, and Helena, Montana, and the terminal point Great Falls, Montana; Route No. 52 between Great Falls and Edmonton, Alberta, Canada, via Cut-Bank-Shelby, Mont.; Lethbridge and Calgary, Alberta, Canada; Route No. 63, between Los Angeles and San Francisco, extended May 19, 1947, to Portland, Ore., and Seattle, Wash.; Route No. 68, between Los Angeles and Denver, Colo., via Las Vegas, Nev., and Grand Junction, Colo.

Inland's route No. 28, between Cheyenne, Wyo., and Great Falls, Mont., via Casper and Sheridan, Wyo., and Billings and Lewiston, Mont. Inland's

Denver, and also extends north and south along the Pacific coast between Seattle and San Diego via San Francisco and Los Angeles and other intermediate points. It also operates routes Nos. 17 and 57, and a route between San Francisco and Honolulu, T. H. The Board's decision of May 19, 1947, consolidating routes Nos. 1 and 11, permits a nonstop operation between Los Angeles and Chicago and points east thereof on route No. 1.² [1743]

The principal provisions of the agreement of March 6, 1947, for which approval is requested, follow:

(1) Western agrees to transfer to United its certificate of public convenience and necessity for route No. 68 (Denver-Los Angeles), and sell certain property used and useful in connection with the operation of the route, an itemized inventory of which was attached as Exhibit A.

(2) United shall pay Western in cash as consideration for the agreement the sum of \$3,750,000.

(3) United agreed to loan Western, within two days after execution of the agreement, the sum of

route No. 35, between Minneapolis-St. Paul, Minn., via Rochester and Mankato, Minn.; Brookings, Huron, Pierre, Spearfish, Rapid City, S. Dak., and (a) beyond Rapid City, via Hot Springs, Chadron, Alliance, and Scottsbluff, Nebr.; Cheyenne, Wyo., and the terminal point Denver, Colo., and (b) beyond Rapid City, the terminal point Sheridan, Wyo.

²Transcontinental and Western Air, et al., Route Consolidations, Docket No. 2142, decided May 19, 1947.

\$1,000,000 in cash, evidenced by a promissory note due on or before September 1, 1947, secured by a chattel mortgage. If the agreement is approved by the Board on or before September 1, 1947, the loan will be credited to the total consideration to be paid Western. If the agreement be disapproved by the Board prior to September 1, 1947, the loan is to bear interest at the rate of 3 per cent per annum from the date of the Board's order.

(4) The parties shall request the Board to amend the certificate for route No. 68 simultaneously with the approval of the transfer to United to include a restriction prohibiting the transportation by United of passengers, property, and mail between Los Angeles and Las Vegas.

(5) If approved by the Board the consideration going from United to Western and the transfer of certificate and other property shall take place on the 21st day following the issuance of the order.

(6) In the event the Board disapproves the agreement, the parties will be relieved of all obligations thereunder except that Western shall be obligated to United on account of the promissory note and chattel mortgage according to the terms thereof. [1744]

Approval of the agreement is requested under sections 401, 408, and 412 of the Civil Aeronautics Act. Section 401(i) provides that no certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest. Section 401(h) provides that the Board may,

upon petition or upon its own initiative, after notice and hearing, amend any certificate if required by the public convenience and necessity. Section 408(a)(2) provides that it shall be unlawful, unless approved by order of the Board, for any air carrier to purchase the properties or any substantial part of the properties of any air carrier. Section 408(b) provides for approval unless the transaction "will not be consistent with the public interest." Section 412(a) provides for the filing of agreements by air carriers while paragraph (b) of the section provides that such contract or agreements shall be disapproved if found adverse to the public interest or in violation of the Act. The difference in language of these sections has little practical effect as public interest is the primary consideration under each section, and the test of public interest is the same under each section.

Western was issued a certificate for route No. 68 November 11, 1944, in a proceeding in which it, United, TWA, and Continental were applicants.³ On appeal by United the Board's decision was upheld by the United States Court of Appeals for the District of Columbia.⁴ Western began operations over the route on April 1, 1946, with DC-4 equipment. For the nine months ending December 31, 1946, it realized a profit on route No. 68 of approxi-

³Western A. L., Denver-Los Angeles Service, 6 C.A.B. 199.

⁴United Air Lines v. Civil Aeronautics Board, 155 Fed. 2nd, 169 (decided April 22, 1946).

mately \$640,000, the only route on which a profit was earned during the year. [1745] For the twelve-month period April 1, 1946, through March 31, 1947, traffic over the route totaled 93,812 passengers, of which 25,125, or 27 per cent, were exchanged with United at Denver and traveled to or from Chicago and points east thereof. Total passenger revenue derived from Route No. 68 in 1946 was \$2,670,000.

Western's president testified at length as to the reasons why Western determined to transfer the route No. 68 certificate. He stated that after he assumed the office on January 1, 1947, he was concerned with the company's financial position and its future; that an analysis convinced him that Western's dual role as a regional carrier and as a participant in transcontinental transportation was one of the primary causes of the company's difficulties. He concluded that the Denver gateway with its change of planes had proved less attractive to the public than single-carrier service to the west coast and that, with intensification of competition and route consolidations then pending by TWA and American, the service would become still less attractive.

Western's president stated that route No. 68 is the only segment over which it needs to operate DC-4 or DC-6 aircraft because of the terrain, but that utilization of this aircraft over such a short segment is uneconomical. Yet he felt that without DC-6 aircraft it will be impossible for Western to compete for transcontinental traffic to and from Los Angeles with American using DC-6 and TWA using

Constellation equipment. He was of the opinion that the local traffic between Denver and Los Angeles is not sufficient to justify Western's purchase of DC-6 aircraft. The witness reasoned therefore that, in order to derive the ultimate full benefit of route No. 68 as a proper segment of a trans-continental route, Western should be extended to Chicago. This, he believed, would involve additional capital requirements [1746] of approximately \$35,000,000. The witness further concluded that if Western should get to Chicago it was inevitable that United would be extended to Los Angeles and, therefore, Western would be a poor fourth in a competition with American, TWA, and United, between Chicago and Los Angeles. Therefore, in order to make this program fully effective, it would be necessary for Western to attempt to get to New York or some other eastern terminal, which would necessitate an additional \$50,000,000 in capital.

Western's balance sheet as of February 28, 1947, showed current assets of \$3,820,000 and current liabilities of \$10,095,000, with more than \$1,000,000 of the current assets in the form of inventories of parts and supplies. Western's president testified that he was advised by underwriters and bankers in the latter part of January, 1947, that a financing program of Western, which had been negotiated in the latter part of 1946, could not be activated because of depressed conditions of the market and the general public reaction against airline securities. The company had major obligations of several million dollars coming due on February 10, which, if

not extended or met, could have resulted in receivership or bankruptcy for Western. Confronted with this situation the witness testified that he made an appraisal of the company's future policy and goal. He concluded that continued operation of the system as it exists would necessitate additional capital requirements of \$15,228,000 in order to meet financial obligations incurred and to procure DC-6 equipment which the company felt would be necessary if it continued operation of route No. 68. On the other hand, he concluded that if Western disposed of route No. 68 and confined its operations to a north-south route west of the Rocky Mountains, additional capital requirements would be reduced to \$7,260,000. Much of the reduction results from elimination of DC-6 equipment on order. [1747]

Western's president stated that after considering these prospects, he reached the decision that Western should not attempt to continue to participate in the transcontinental market, but should retire from route No. 68 and concentrate on a regional service in an area west of the Rocky Mountains, based primarily on a route from Edmonton, Canada, to Los Angeles, via Great Falls, Salt Lake City, Las Vegas, and from Seattle to Mexico City via Portland, San Francisco, Oakland, Los Angeles, San Diego, and La Paz. Western believed it could operate this route structure with Convair 240 aircraft and could eliminate 4-engine equipment, thus permitting it to conduct all of its operations with one type aircraft with greater economy.

The witness stated that he felt the time had come

to make some route adjustments in the country's air transportation map by reason of the technological development in aircraft which affect existing route structures. He concluded that United Air Lines, the only transcontinental carrier connecting with route No. 68 in Denver, was the logical carrier to take over operation of route No. 68. In the latter part of February, 1947, Western's president called the president of United, discussed the matter with him, and arrangements were made for a meeting in California on February 28. Discussions continued for several days, resulting in the agreement for which approval is sought.

Upon the signing of the agreement, \$1,000,000 of the purchase price was advanced to Western as a loan evidenced by a promissory note, secured by a chattel mortgage on four DC-4 aircraft, three of which were units other than those which are to be transferred to United under the terms of the agreement. [1748]

Neither the Delaware law, under which Western is incorporated, nor the company's by-laws requires shareholders' approval. The transfer was authorized by a meeting of the board of directors on March 5, attended by four of the directors, while the fifth was called at his home in Salt Lake City and expressed informal approval. The directors are: Mr. Wm. A. Coulter, owning 228,810 shares of stock; Mr. Leo Dwerlkotte, owning 15,112 shares; Mr. Stanley Guthrie, owning 625 shares; Mr. T. C. Drinkwater, owning no shares, and Mr. George A. Smith for the Mormon Church, owning 898 shares;

the total owned or represented by the directors amounts to 46.9 per cent of the authorized and outstanding shares.

It is asserted by the applicants that the transfer of route No. 68 is in the public interest for the following reasons: (1) That route No. 68, being a segment of the Great Circle transcontinental route, is properly a segment of United's transcontinental route No. 1; (2) that it is in the public interest that appropriate route adjustments be effected voluntarily by carriers subject to Board approval and that such voluntary cooperative efforts should be encouraged; (3) that route No. 68 will not support separate services, one local and one transcontinental; that operated as a local route it will not support economical services with four-engine equipment; that the local traffic is not sufficient to support a separate service; therefore, United can but Western cannot operate the route at a profit; (4) that the financial benefits accruing to Western are in the public interest; (5) that the transfer of route No. 68 to United will not create a monopoly or restrain competition, and that no other carrier will be harmed by the transfer.

It is also contended by the applicants that the transaction will make possible additional and improved air services to the public. The cities served by United which will be given new one-carrier service to Los Angeles [1749] and other points on route No. 68 are: Omaha, Des Moines, Moline, Cedar Rapids, Iowa City, Lincoln, Grand Island, and North Platte. These cities had a 1940 popula-

tion of 1,320,474 persons within a 25-mile traffic generating area, and all are key cities of important trade areas. The record shows that on the west coast the predominant community of interest of cities in the States of Illinois, Iowa, and Nebraska is with Los Angeles. In September, 1946, all of the cities on the Denver-Chicago segment of United's route No. 1, which would receive new one-carrier service to Los Angeles under the proposal here involved, had more traffic to and from Los Angeles than with San Francisco despite the fact that they had direct one-company service to that city and did not have such service to Los Angeles. The predominance in Los Angeles travel over that with San Francisco ranges from 2.6 times in the case of Des Moines to 1.5 in the case of Lincoln. In September, 1946, the cities between Denver and Chicago generated 1,295 passengers to and from Los Angeles and a total of 1,425 passengers to and from Southern California. United estimated that for the year 1948 a total of 15,287 passengers will travel over route No. 68 between the cities intermediate to Denver and Chicago and Southern California points. In September, 1946, there were 3,246 passengers who traveled between Los Angeles and Denver, 603 between Grand Junction and Denver, 236 between Grand Junction and Los Angeles, and 149 between Las Vegas and Denver. United estimated that under its operation 104,000 passengers would move over route No. 68 in 1948. Denver will be given new one-company service to Southern Cali-

fornia points and will be placed upon the Los Angeles transcontinental air freight route, giving the cities the benefits of augmented air [1750] freight service both in frequency and improved equipment. It is also contended that United will provide the latest four-engine pressurized equipment over the route and that elimination of the arbitrary junction point at Denver offers definite benefits in flexibility of service under adverse weather conditions.

The intervener, Minneapolis-St. Paul Metropolitan Airports Commission, takes the position that the Board has found that the public convenience and necessity require single air carrier service between the Twin Cities and Southern California; that the agreement presented for the Board's approval wipes out at one stroke this single-carrier service and is in derogation of the public interest, and if the public interest is to be protected, approval of the agreement should be so conditioned that the same or equivalent service will be provided. On December 19, 1946, Inland, a subsidiary of Western, was extended from Huron, S. D., to the Twin Cities, providing a direct one-carrier service between the Twin Cities and the Denver-Los Angeles area.⁵

In September, 1946, there was a total of 1,065 passengers between the Twin Cities and Los Angeles. On April 1, 1947, Western inaugurated operations into the Twin Cities. Traffic data for the month of April submitted for the record show a total of 320

⁵North Central Case, Docket No. 415, et al., decided Dec. 19, 1946.

passengers from Twin Cities to Denver and beyond, 303 passengers from the Twin Cities to points east of Denver, 41 passengers from Rochester to Denver and beyond, or a total of 664 west-bound passengers. The record does not contain the east-bound [1751] traffic out of Los Angeles, but Western's traffic manager estimated it would be the same as the west-bound, or a total of more than 1,300. The record also shows that during April, 1947, Northwest and Mid-Continent together carried 495 passengers out of the Twin Cities destined to Los Angeles. Combining this figure with Western's traffic of 320 to Denver and beyond, shows a minimum of 815 passengers using air travel one way, or a gain of 34 per cent over September, 1946.

The intervener points out that there was rain on 26 out of the 30 days in April, that Western did little advertising of its new route since it had already decided to discontinue service by selling route No. 68, that Western's downtown ticket office is on the 14th floor of an office building, and that neither of the two schedules operated out of Twin Cities is a single-plane service, in spite of which the actual load factor over the route was 70 per cent. The intervener argues that these traffic data reflect a steadily growing community of interest between the Twin Cities and Los Angeles, which requires a single-carrier service. The intervener contends that if the Board desires to approve the sale of route No. 68 and still protect the public interest, it can and should condition approval so that the same or equivalent service will be provided. It suggests two

methods whereby this might be done: (1) to require United to purchase route No. 35 and operate the Los Angeles-Twin Cities route as a whole; (2) to require single-plane dual carrier service through a satisfactory equipment interchange at Denver. It is the position of the intervener that the first alternative appears ideal. [1752] In this connection, the president of United stated that United would be willing to purchase route No. 35 at a price "set by the Board." When questioned regarding an interchange arrangement at Denver, United's president suggested the possibility of a route-leasing arrangement between United and Mid-Continent at Omaha, and testified that prior to the instant transaction the chairman of the board of directors of Mid-Continent had discussed the possibility with him and that both were interested in the matter.

One of the provisions of the agreement is that the parties shall request the Board upon approval of the transfer of certificate that it be amended by including a restriction prohibiting United from transporting passengers, property, and mail between Los Angeles and Las Vegas. Las Vegas is now and has always been an intermediate point on Western's route No. 13, which route embraces 3 segments, San Diego to Los Angeles, Los Angeles to Las Vegas, and Las Vegas to Salt Lake City. The September, 1946, survey indicates that the local Los Angeles-Las Vegas traffic accounts for approximately 25 per cent of the revenue passenger miles generated by route No. 13. Western contends that the local traffic between Las Vegas and Los Angeles is a source of

strength to route No. 13 which should not be diluted by United carrying traffic over the route. United takes the position that the Los Angeles-Las Vegas traffic was originally Western route 13 traffic and should be reserved to that route as it is short-haul, high-density traffic of the sort which Western as a regional carrier will be equipped to carry. United expressed its [1753] willingness to accept a restriction of this nature in the Denver-Los Angeles case, and it should be noted that TWA is restricted from engaging in local transportation between Las Vegas and Los Angeles. The only local transportation between these points is furnished by Western on its routes Nos. 13 and 68.

United requested that, if the Board approve the transfer of route No. 68, it should be consolidated with route No. 1. If route No. 68 and route No. 1 are consolidated, United, among other things, will be able to operate nonstop services between Omaha and Los Angeles and provide a one-stop service between Minneapolis-St. Paul and Los Angeles, via Omaha, through connections with Mid-Continent at that city. It was also pointed out that such a consolidation would eliminate the present operating disadvantages at Denver under adverse weather conditions and would permit flexibility of United's operations and improve the long-distance service on route No. 1. The record does not indicate that any of the intervening carriers will be adversely affected by the consolidation and no carrier advanced such a contention at the hearing. [1754]

Conclusion

Approval of the transfer of a certificate of public convenience and necessity under section 401(i) requires an affirmative finding that the proposed transfer will be consistent with the public interest. Adjudication of this issue is a balancing process with no single factor controlling the determination. The Board has said that "The public interest has direct relation to the adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provisions and best uses of transportation facilities."⁶

In considering acquisitions of control and transfers of routes, the Board has ever borne in mind the fact that the air map of the country can be changed as drastically by such transactions as by obtaining certificates of public convenience and necessity and, where such transactions might result in destroying a balanced route system, approval of the proposal has been withheld. An early application of this principle is found in a previous agreement between these same carriers wherein the Board refused approval of the proposed acquisition of Western by United.⁷ This transaction, as all such proposals, must be examined to determine whether it will facilitate an economically sound and efficient operation and at the same time satisfy the standard

⁶Acquisition of Marquette by TWA, Sup. Op., 2 C.A.B. 409.

⁷Acquisition of Western A. E. by United A. L., 1 C.A.A. 739.

of public convenience and necessity. To serve this purpose it is necessary that the route to be transferred should bear an integrated relation to United's system and be adapted to its normal flow of air traffic.⁸ There can be no question but that route 68 will bear an integrated relation to and will fit geographically into United's system. The Denver-Los Angeles segment is a segment of the Great [1755] Circle transcontinental route between Los Angeles and New York. The Board recognized this fact when the route was certificated.⁹ In that decision the Board recognized that the interest of a large portion of the traveling public on the Denver-Los Angeles route would best be served if it were operated by United as a transcontinental carrier. However, the Board found that this consideration was outweighed by the destructive effect which the award of this route to United would have upon Western.

Since Western is the only carrier operating over route No. 68, the transfer to United will not remove any competition over the route. With United now having non-stop right between Chicago and Los Angeles, approval of the agreement will not result in creating a monopoly or restraining competition, thereby jeopardizing other air carriers not a party to the transaction, nor does the record indicate that

⁸National-Caribbean Atlantic Control Case, 6 C.A.B. 671.

⁹Western A. L., Denver-Los Angeles Service, *supra*.

any other carrier will be adversely affected by loss of revenues so as to impair its ability to render present service.

It is urged by Public Counsel that the proposed transaction should be disapproved on the ground that controlling considerations of public policy make it undesirable. It is argued that the applicants have undertaken to remake the aviation map and have arrogated to themselves a function of the Board; that approval of this transaction will result in similar actions. It is urged in view of the circumstances under which Western acquired route No. 68, that Western now seeks to profit by what it now claims was a mistake on its part and on the part of the Board. It is the position of Public Counsel that Western ought to apply to the Board for the transfer of the route to such applicant as the Board might designate and that United ought to be required to prove in a proceeding where other carriers have equal chance to present a case that the public [1757] interest requires that it have the Denver-Los Angeles route, and that if the latter be true, there is no reason why United should have to pay for such a route. Three reasons are advanced why the proposed sale should not be approved: (1) It would tend to establish as a criterion for selection of a carrier, not fitness and ability to conduct the service, but willingness and ability to outbid competitors for it; (2) it would encourage the peddling of certificates; (3) it would compel the acquiring carrier, United, to expend its funds to

obtain a service which by hypothesis it is in the public interest for it to operate.

Undoubtedly, the question of whether United should be forced to pay for a service which it is in the public interest for it to operate is a matter of concern in resolving this question. However, it is appropriate first to determine whether the proposed transaction in and of itself, aside from such elements as price, is in the public interest or whether it is so inherently bad on its face as to be plainly contrary to the public interest. If the latter be true, then there is no necessity for considering the matter further. On the other hand, it is possible for a situation to exist wherein a transfer of a route if made at a reasonable price is consistent with the public interest as illustrated by the Marquette case. In determining whether the proposal is in the public interest it is necessary to review the facts in Western's certification for the route.

In the Western-United Merger case, the decision was reached to preserve Western as a carrier having good promise of rendering independently an efficient service in the western part of the country. At that time Western was both a north-south operator and a link in a transcontinental service via Salt Lake City. The Board has never lost sight of this objective, for in the Denver-Los Angeles service case in which [1757] Western, United, TWA, and Continental were applicants the Board awarded Western the route. In that case the Board found that the interest of a large portion of the traveling public would best be served if the route were oper-

ated by United as a transcontinental carrier; however, the Board felt it necessary to subordinate this interest to protecting Western at the time. It was clear that the Denver-Los Angeles service was a substitution of Denver for Salt Lake City as a connecting point for Los Angeles traffic to and from the east, and that award of the route to any carrier other than Western would result in serious diversion of Western's revenue. The record at that time showed that half of the traffic on Western's Los Angeles-Salt Lake City route was destined to or originated at Denver or points east. At that time route 13 was Western's strongest route, and on the basis of the record in that proceeding the Board concluded that the award of the route to United or any other carrier would divert so much traffic from Western as to seriously impair its ability to continue as a strong independent carrier in position to compete for traffic in the western section of the country. The Board pointed out that transcontinental travelers going via Denver may suffer inconveniences because of connections, but that inconvenience is outweighed by the public advantage of preserving Western as a strong regional carrier. It seems quite clear that the Board did not feel that it could take from Western its strongest route at that time and hope for that carrier to continue to operate an efficient service. [1758]

The Board did not at the time of that decision have before it for decision Western's application for extension into Portland, Seattle, Mexico City, and other points, and Western had not inaugurated

its Los Angeles-San Francisco operation. The Board has recognized in several opinions that it is inevitable in an industry as dynamic and changing as air transportation that certain adjustments have to be made from time to time. As implied in one of the Member's concurring opinion in the Denver-Los Angeles decision, the award of the route to Western did not forever close the door to United subsequently being given a similar award, but that continued technical development of transport aircraft might make it economically desirable to conduct non-stop operations between the Mississippi Valley and the Pacific coast.

That technical development is now here. The advent of larger aircraft has offered the advantages of greater speed and range. To take full advantage of the technological developments of air transportation the Board in recent months has been called upon to make numerous adjustments in route patterns. The routes of three of the transcontinental carriers, American, TWA, and United, have been consolidated to permit the operation of non-stop services between major metropolitan cities of the east and west coast, all of which permit improvement in service benefiting a substantial volume of passengers. One day before the hearing began in this proceeding the Board issued its order consolidating certain routes of TWA, American, and United, the effect of which was to permit each of these carriers to operate non-stop services between Chicago and the west coast. United was permitted to make its first direct entry into Los Angeles on

route No. 1 by means of non-stop service between Los Angeles and Chicago or points east [1759] thereof.

The foregoing developments since the Board's decision in the Denver-Los Angeles case have resulted in substantial changes in the relationship of route No. 68 to the remainder of the Western system. Although the only route upon which Western realized a profit in 1946 route No. 68 can no longer be expected to be Western's predominant route. Traffic originating at points east of Chicago for Los Angeles and interchanged with United at Denver can no longer be expected to utilize the Western service in view of the availability of United's, American's and TWA's through service from Chicago to Los Angeles. Thus, of 66,000,000 revenue passenger miles developed during the 12 months ended March 31, 1947, over route No. 68, approximately 21,000,000 revenue passenger miles represent passengers interchanged with United at Denver for points east of Chicago. Western estimates that the loss of the through business would have changed a profit of \$650,000 for the period April 1 to December 31, 1946, to a loss of about \$360,000.

In addition to the reduced importance of the Denver-Los Angeles segment as a source of traffic, important developments in other parts of the Western system have materially contributed to the changed relationship. Western's route No. 63 between Los Angeles and San Francisco, which was not in operation at the time of the Board's decision in the Denver-Los Angeles route case, has developed

a substantial volume of business for Western as evidenced by the 24,146 passengers carried between these points by Western in September, 1946. Of peculiar significance is the growth of traffic on route No. 13 between Los Angeles and Salt Lake City. It was over this segment that connecting transcontinental traffic moved prior to inauguration of the Denver route and it was the potential loss of this traffic [1760] which the Board considered as controlling in its awarding the Denver-Los Angeles route to Western. Yet, traffic data show that the revenue passenger miles on route No. 13 increased from 2,685,966 in September, 1943, to 4,852,000 in September, 1946.

Other routes for which Western has been certificated but on which service has not yet been inaugurated or fully developed include the Los Angeles-Mexico City route and the San Francisco-Portland-Seattle route. Both of these routes are potentially strong in traffic and should further enhance Western's position as a western regional carrier. Western's recent development of its regional traffic, and future traffic that may be anticipated on the routes certificated since the opinion in the Denver-Los Angeles case, clearly indicate that its participation in the transcontinental interchange traffic does not and will not in the future play the predominant role it did at the time it was awarded the Denver-Los Angeles route.¹⁰ Thus, it is clear that the impelling reason which led the Board in

¹⁰Transcontinental & Western Air, Inc., Consolidation of Routes, *supra*.

1944 to select Western as the operator of the Denver-Los Angeles route no longer exists.

There is also evidence in the record indicating that because of the mountainous terrain of route No. 68 it could best be operated with 4-engine equipment. Western plans to operate its other routes with standard new twin-engine equipment, but says if it continues to operate route No. 68 it would have to maintain 4-engine equipment for this route and forego many of the economies that it can effect by standardization of its equipment. [1761] Confronted with this problem, Western concluded it should not continue to operate route No. 68 but should restrict its operations to those of a regional carrier serving that region of the United States which lies west of the Rocky Mountains. According to Western, continued operation of route No. 68 and the Inland system would force it to retain transcontinental aspirations that might in the end become quite costly. Such managerial judgment on the part of Western does not seem contrary to the public interest.

On the other hand, United could profitably maintain service over the route No. 68 with the type of equipment it now operates providing not only non-stop service from major eastern points but also the needed local service from Denver to Lower California. Operation by United would, in addition, enable that carrier to provide a single-carrier service between Los Angeles on the one hand and points between Denver and Chicago¹¹ on the other which

¹¹Omaha, Des Moines, Moline, Cedar Rapids, Iowa City, Lincoln, Grand Island, and North Platte.

would be required to make connections at Denver if the route were retained by Western. During September, 1946, a total of 1,425 passengers utilized the existing connecting service to Lower California and in view of past experience an increase in traffic volume may be expected with the substitution of a direct single-carrier service.

As hereinbefore pointed out, the Minneapolis-St. Paul Airport Commission contends that if the Board approves the sale of route No. 68, the service between the Twin Cities and Southern California should not be impaired. In determining whether the proposed sale is in the public interest we must, of course, weigh all pertinent factors and consider any detriment which might result from the transaction. It is recognized that approval of the [1762] Western-United agreement will eliminate one-carrier service between the Twin Cities and Los Angeles. However, when considering this factor in connection with the many benefits to be derived from the proposed sale, we do not believe this is so serious as to outweigh the advantage and require disapproval of the transaction. The evidence submitted by the Twin Cities shows that there is a steadily growing community of interest between the Twin Cities and Los Angeles. While Western has provided these communities with one-carrier service, it has not supplied single-plane service, nor could it conduct nonstop operations between the Twin Cities and Los Angeles under existing route authorizations because of a required stop at Denver, a route junction point. United has expressed a

willingness to accommodate the Twin Cities-Los Angeles traffic, and points out that the approval of this transaction will create a two-carrier, two-plane service in place of a one-carrier, two-plane connecting service. United asserts, however, that in addition to convenient connecting schedules, it will also be able to provide additional schedules at Denver which will permit business or pleasure lay-over time at that city to persons traveling to and from Los Angeles and the Twin Cities and other points on route No. 35. The Twin Cities will also have the benefit of additional services to Los Angeles through the Omaha gateway, from which point United plans to conduct nonstop flights to Los Angeles.

In addition, there are three possibilities for the equivalent of one-carrier and probably one-plane service between Twin Cities and Los Angeles: United could and it has indicated a willingness to buy route No. 35; it could make appropriate arrangements with Inland which would [1763] provide a single-carrier service between the Twin Cities, Denver, and Los Angeles; or it could enter into a route-leasing or interchange agreement with Mid-Continent which would provide one-plane service via Omaha. It would thus appear that approval of the transfer of route No. 68 to United will not impair the quality of the existing service between the Twin Cities and Los Angeles, but might even result in an improvement of such service. In any event, United will be expected to initiate some arrangement for the provision of adequate service

between the Twin Cities and Denver and Los Angeles.

The intervener, Air Line Pilots Association, urges that the Board require as a condition of approval of the sale of route No. 68 that the pilots on the Denver-Los Angeles division should be taken over by United and given full employment and seniority rights without prejudices. It is not clear from the testimony that the local organizations of Western and United pilots subscribe to this policy. Western's president testified that Western had every intention of retaining the 14 flight crews operating on route No. 68 in the event this transaction is approved and transferring them subject to their seniority. This witness testified that Western would need more than the 14 crews available from the sale of route No. 68 in order to operate the Seattle extension and the Mexico City route. The witness also testified that no employee of Western will be released because of this transaction and that every competent employee in the employment of the company at Grand Junction and Denver will continue with Western, that the company will probably need more employees at Portland and Seattle than it presently employs at Denver and Grand Junction, and that Western will pay the employees' moving expenses. [1764] The evidence shows that the question of transfer of pilot personnel was not discussed in the negotiation preceding this transaction, nor was it a condition of the sale. It is clear from the record that Western's pilots will continue to be employed by Western, retaining their seniority and

other rights, and that every other competent employee on route No. 68, who would be retained by the company if this transaction had not been proposed, will continue to be employed by the company with full rights. Therefore, since there is nothing that would indicate that any of the rights of Western's present employees on route No. 68 will be prejudiced by the acquisition and operation of that route by United, there appears to be no reason for any condition of the nature urged by the Air Line Pilots Association.

In view of the foregoing considerations and all the facts of record, we find that the operation of route No. 68 by United is consistent with the public interest.

The Purchase Price

A principal issue in the present case is concerned with the price to be paid by United Air Lines for the property and business being purchased. The question arises whether this acquisition should be disapproved as contrary to the public interest unless the parties agree to reduce the price by an amount necessary to reflect the investment of Western in the property and business which are being transferred. The implications of such a question are of such importance to the air transportation system of the nation as to require the careful consideration of this Board. [1765]

The consideration to be paid by United has been fixed by the contracting parties at \$3,750,000. The tangible properties to be transferred, according to the record, were acquired by Western at an original

cost of \$2,022,400. Depreciation accruals through charges to operating expense as of March 31, 1947, have been accumulated against these properties in the amount of \$331,212, leaving an investment, after allowance for accrued depreciation, of \$1,691,188. It thus appears that the purchase price exceeds the original cost of the tangible properties by about \$1,700,000 and is greater than the cost less depreciation of such properties, as carried on Western's books, by approximately \$2,000,000.

Although it appears probable from the record that the purchase price was negotiated by the parties on a "lump-sale" basis rather than by totaling the individual prices for the various items composing the properties and business to be transferred, evidence was presented to indicate that an amount of approximately \$2,250,000 was considered to represent the fair market value of the tangible properties, leaving \$1,500,000 as the estimated payment for the intangible values covered by the agreement. In the allocation of the total purchase price as between tangibles and intangibles, the tangible properties were revalued at a price which exceeded the cost of these properties to Western less accrued depreciation by about \$500,000. The reasonableness of the price allocations to various individual items in the inventory of properties may be questioned as lacking convincing evidential support in the record. It does not appear to us, however, that any useful purpose will be served by detailed examination of these individual allocations. From the point of view of the burden to the public the total excess of the

price to be paid by [1766] United over the cost of these properties to Western, less allowable depreciation, must be considered as an upward revaluation of the investment, the inclusion of which for rate-making purposes would tend to support higher charges to the public for services performed over Route 68.

The source of greatest injury to the public interest from the transfer between air carriers of properties already dedicated to the public service necessarily stems from the tendency to revalue upward the properties so transferred for purposes of determining the investment upon which a return must be provided in the rate which the public must pay for services performed by these properties. We are therefore of the opinion that for rate-making purposes the proper valuation of these properties should be related to the original cost to Western less allowable depreciation rather than to the fair market value of such tangible property. On this basis the purchase price exceeds the valuation of these properties for rate-making purposes by approximately \$2,000,000 rather than the \$1,500,000 claimed by the parties to the agreement and accepted by Public Counsel.

The effect upon the public interest of the purchase price to be paid by United is one of the principal factors which the Board must consider in determining whether this transaction should be approved. It is important to keep in mind that the Board is not called upon in this proceeding to determine the price that shall be paid, but to deter-

mine whether the price which has been agreed upon by the parties is of such an amount and character as to render the Board's approval of the purchase adverse to the public interest. A purchase which is otherwise acceptable must, in the absence of overriding considerations, be adjudged contrary to the public interest if the consideration is so unreasonable as to adversely [1767] affect the interests of the buyer, the seller or the public. The question thus presented, therefore, is whether the contract price of \$3,750,000 is so related to the value of the properties being conveyed by Western to United that the Board can be satisfied that the interests of the traveling and shipping public and of the investors in air carrier operations will not be adversely affected.

At the outset it must be observed that for the purposes of this proceeding the value to be considered is the exchange value of the properties to be transferred, and not their value for rate-making purposes, the issuance of securities, corporate reorganization, taxation, condemnation or other public purposes. "Value," wrote Mr. Justice Brandeis, "is a word of many meanings."¹² The elements of valuation which may be considered by courts and regulatory agencies in one type of proceeding are not necessarily the same as those which may be considered in another. Thus goodwill, franchise value, and going concern value based upon a

¹²Southwestern Bell Telephone Co. v. Public Service Commission, 262 U. S. 276, 310 (1923). (Opinion of Brandeis and Holmes, J.J.)

capitalization of past deficits have been excluded from the rate base in determining whether a public utility rate was confiscatory,¹³ but where a community acquires a public service corporation by purchase or condemnation, compensation must be made under some circumstances for its going concern value and its franchise.¹⁴ Similarly, in determining the [1768] value of a railroad for the purpose of reorganization proceedings under Section 77 of the Bankruptcy Act, the corporation's prospective earning power is the primary criterion of value.¹⁵ The Supreme Court of the United States has long recognized the distinction between value used in the exchange of property and value for rate-making purposes,¹⁶ and it has stated in an oft-quoted opin-

¹³*Willcox v. Consolidated Gas Co.*, 212 U. S. 19 (1909); *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 223 U. S. 655 (1912); *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153 (1915); *Galveston Electric Co. v. Galveston*, 258 U. S. 388 (1922).

¹⁴*Omaha v. Omaha Water Co.*, 218 U. S. 180 (1910); *Monongahela Navigation Co. v. United States*, 148 U. S. 312 (1893).

¹⁵*Group of Investors v. Milwaukee R. Co.*, 318 U. S. 515 (1943). In another case involving valuation for the purpose of a railroad reorganization, Mr. Justice Reed, speaking for the Court, observed: "There is no more important element in the valuation of commercial properties than earnings." *Ecker v. Western Pacific Railroad Corp.*, 318 U. S. 448, 483 (1943).

¹⁶E.g., *Omaha v. Omaha Water Co.*, note 14, *supra*, at p. 203.

ion that "in determining the value of a business as between buyer and seller, the goodwill and earning power due to effective organization are often more important elements than tangible property."¹⁷

We recognize that in exchange transactions for the transfer between air carriers of properties already dedicated to the public service such as the one which is the subject of the present proceeding, the prices which are paid respond to numerous incentives, many of which are collusive or improperly speculative in character. The inclusion in the investment base for rate-making purposes of intangible values stemming from such transactions must be vigorously challenged. It is obvious that if such intangibles were admitted to the rate base and the rates adjusted upward to provide a return on the [1769] investment thus inflated above original cost, the spiral of speculative values would have no limit other than the ability of the public and government to pay a return on the investment thus inflated.

But since commercial values in a free economy are, in large part, a capitalization of future earning power, and since the estimate of future earning power reflects the continuously changing appraisal of the risks of the industry by the suppliers of capital, the existence of intangible market values cannot be denied without exceeding the

¹⁷*Galveston Electric Co. v. Galveston*, 258 U. S. 388, 396 (1922). See also: *Southwestern Bele Telephone Co. v. Public Service Commission*, note 12, *supra*, at p. 311.

bounds of realism. The willingness of an able buyer to pay a price is the expression of a strong conviction, and when such convictions are held by experienced and capable people they cannot be disproved simply by establishing that such prices do include elements of intangible value.

It is of utmost importance that this Board not give impetus to speculative bidding by permitting the speculative elements of exchange values to be underwritten through inclusion directly or indirectly in the investment rate base. The public interest requires that it be made unmistakably clear to all stockholders and to all prospective future investors in the air transport industry that the intangible values which may be purchased in the acquisition of air carrier properties already dedicated to the public service will never be recognized by this Board as a part of the carrier's investment for rate-making purposes. This Board will not permit the rates charged to the public to be increased to provide a return on such intangibles or to otherwise burden such rates with charges for the recoupment of the cost of such [1770] intangibles.

In determining the investment value of the subject properties in the instant agreement for rate-making purposes, therefore, we will provide that these properties shall not be augmented in value beyond their reasonable investment value for rate-making purposes by reason of their transfer from Western to United and that the amount in excess

of the original cost to Western, less allowable depreciation, shall be charged against surplus.

In appraising the reasonableness of the purchase price as related to the public interest in the transaction now before us, one guide to judgment is the fair commercial price as established by the arm's length bargaining of the parties. In our consideration of this question we must either accept the normal market standards for arriving at prices in business transactions, after taking adequate precaution against the abuse of these standards by reason of fraud, duress, or collusion, or we must accept the responsibility of fixing the price on the basis of our own standards. The latter course we consider to be not only contrary to the intent of the Act, but outside the competence of the Board.

Evidence of the reasonableness of the price in the present proposed transaction is the fact, which clearly appears of record, that the parties negotiated at arm's length.¹⁸ The negotiations were free from any suggestion of collusive or fraudulent purpose. The seller agreed to a price which it believed to be a fair consideration for the property and business which it had developed on this route and was now selling. The purchaser likewise believed that the price was fair to it. Both parties were represented by their presidents, men of business experience and ability and knowledge of air transport business. In the absence of contradictory evidence, we [1771] cannot lightly consider the

¹⁸Cf: National-Caribbean Atlantic Control Case, 6 C.A.B. 671 (1946).

undisputed fact that the price was reached after negotiations conducted at arm's length, by men who sought to safeguard the interests of their respective companies and were competent to do so.

It is apparent that the parties cannot have relied upon past precedents of the Board for support of the intangible values through revaluation of the properties for rate-making purposes. For those precedents make clear the Board's policy to exclude any consideration of such values in prescribing fair and reasonable rates.¹⁹ Counsel for United Airlines clearly stated on the record that United did not expect the amount of \$1,500,000 which it identified as the intangible value in the purchase price to be incorporated in its rate base and would not ask that the rates bear any part of the cost of such intangibles. The record discloses no evidence to support a conclusion that the price agreed upon was influenced by any factor other than the fair commercial value of the properties in question.

That the price in the present transaction is not unreasonable by the standards of the commercial market is further corroborated by the reflection of substantial intangibles in the general market prices of air carrier stocks. The stocks of the larger domestic air carriers, including both parties to the

¹⁹Acquisition of Marquette by T.W.A.—Supplemental Opinion, 2 C.A.B. 409 (1940); Wien Alaska Air—Acquisition—Mirow Air Service, 3 C.A.B. 207 (1941); Western A. L., Acquisition of Inland A. L., 4 C.A.B. 654 (1944).

subject agreement, have for an extended period consistently sold well above their book values. During the early postwar period the market values ran from three to seven times the book values for corresponding periods. As of June 30, 1946, the per cent of market [1772] price in excess of book value for the stock of United, Western and for the average of the eleven largest domestic carriers was 50%, 71% and 70% respectively. The corresponding figures as of March 31, 1947, soon after the date of the subject agreement, were 31% for United, 35% for Western, and 55% for the average of the eleven largest carriers.

It is thus apparant that if United were to sell stock in the market with which to finance the acquisition of the properties in question it could expect to receive cash substantially in excess of the average book value of its outstanding stock. Although the stock prices which reflect the current values of air carrier properties in general do not necessarily reflect the reasonable market price for any particular air carrier property, they do, nevertheless, serve to lend credence to the reasonableness, in terms of market standards, of the price paid for the properties here under consideration.

Although a clearly extreme price paid for an intangible may in itself be reason for disapproval of an agreement, the facts in this case do not indicate that the price to be paid is disproportionately large. The price assignable to these intangible values attributable to the earning power represents approximately 40 per cent of the total purchase

price. We note that the Interstate Commerce Commission has approved acquisitions in which the value of the intangibles exceeded by as much [1773] as four or five times the value of the physical properties transferred,²⁰ and in which the financial soundness of the transferee and the potential earning power of the properties transferred were less

²⁰Keeshin Transcontinental Freight Lines, Inc.—Control—Seaboard, 5 M.C.C. 25 (1937) (Approved on condition that purchase price be reduced from \$250,000 to \$200,000, thus recognizing intangibles to have a value more than twice as great as the value of the tangibles; purchaser's capital surplus was \$600,000); Airline Motor Coaches, Inc.—Purchase—Mahan, 5 M.C.C. 331 (1937) (Approved purchase price of \$50,000 where tangibles represented only \$8,000, or less than 1/5 the value of the intangibles; purchaser had earned surplus of \$80,657); Brown Express—Purchase—Metzer, 5 M.C.C. 681 (1938) (Intangibles were valued at \$40,000, or four times the value of the tangibles; purchaser has earned surplus of \$24,672); Public Service Interstate Transp. Co.—Purchase—Healy, 5 M.C.C. 735, 15 M.C.C. 481 (1938) (Approved purchase price of \$450,000 where intangible values amounted to \$337,475, or three times the value of the tangibles; purchaser had a surplus deficit of \$1,456,740); Cincinnati, N. & C. Ry. Co.—Control—Black Diamond Stages, 15 M.C.C. 644 (1939) (Intangible values of \$132,039 were three times the value of the tangibles.)

Compare the following cases in which the Commission disapproved acquisitions on the ground of the unreasonableness of the purchase price; Union Bus Lines, Inc.—Purchase—Amberson, 5 M.C.C. 201 (1937) (Good will and operating rights were valued at thirteen times the value of the tangible property, and indebtedness was to be incurred to

clearly established than in the present case.²¹ [1774]

While Western and United made reference to certificate value as a possible justification for that part of the purchase price which is assignable to the \$1,500,000 of intangibles, the record fails to show that such value played any significant part in the negotiations. Western stated that actually the certificate itself bore no part of the purchase price but that "in the exercise of sound business judgment and consistent with ordinary business practice they relied on the profit-making prospects

meet the purchase price); Gray Line Motor Tours, Inc.—Control—Royal Blue, 15 M.C.C. 326 (1938) (Price of \$100,000 was to be paid for a corporation having physical property valued at \$15,858 and a debit balance in its surplus account).

Indeed, the Commission has approved purchases of bare operating rights unaccompanied by any physical properties; Brooks Transp. Co., Inc.,—Purchase—Jacobs Transfer Co., 5 M.C.C. 85 (1937) (\$15,000); Bowen Motor Coaches—Purchase—Morton, 5 M.C.C. 385 (1938) (\$50,000); Interstate Busses Corp. (Conn.)—Purchase—United Transp., 15 M.C.C. 285 (1938) (\$15,000); Capitol Greyhound Lines—Purchase—Peninsula Transit, 15 M.C.C. 459 (1938) (\$40,000); Lee Way M. Freight, Inc.—Purchase—Superior M. Freight Lines, Inc., 15 M.C.C. 745 (1939) (\$15,000).

²¹For example, in Intermountain Transp. Co.—Purchase—Meisinger Stages, 5 M.C.C. 493 (1938), the Interstate Commerce Commission approved an acquisition of a motor carrier at a price of \$30,000, of which sum \$15,810 represented operating rights; the purchaser had a surplus deficit and the vendor had a consistent record of deficits in annual earnings.

of the business venture with which they were dealing to support any amount paid over and above the reasonable value of flight equipment." (Brief, p. 40).

It seems clear from the record that what United was purchasing was the earning power of Route 68 which United believed would be much more productive if operated by itself than if operated by Western. Although the certificate which provides its holder with protection against uneconomic competition is associated with earning power, earning power must not be confused with certificate value. If Route 68 had no earning power and could be operated only at a loss, the certificate would not have added a dollar to the purchase price. Even if any part of the price in the present transaction had been considered by the negotiating parties to represent certificate value, that value would not enter into the rates of the purchasing carrier. For this Board in accordance with its established policy refuses to allow a certificate granted by the public to be capitalized against the public. [1775]

Financial Competence of Buyer

It is pertinent to consider the effect of the present transaction upon the financial competence of the purchaser. This question breaks down into two issues: (1) Does the current financial position of United permit it to finance the purchase price to be paid for the properties in question; and (2) will the transaction undermine the credit of United in

the future so as to impair its ability to perform its common carrier services?

The financial condition of United as of March 31, 1947, compares favorably with other carriers of comparable size in the industry. Its balance sheet reflects current assets of \$24,265,000, current liabilities of \$13,122,000, and quick assets, consisting of cash and marketable securities, of \$13,070,000, and a total capital and earned surplus of \$15,452,000. The total purchase price involved in this transaction is less than 25% of United's surplus and less than 30% of its quick assets. United's total net worth, as of March 31, 1947, was approximately 63% of its over-all capitalization. There has already been advanced to Western the amount of \$1,000,000 which would apply on the purchase price leaving \$2,750,000 remaining to be paid. Under these circumstances there can be little doubt as to the carrier's financial ability to meet the purchase price without jeopardy to its financial position or impairment of its operating efficiency.

The question as to the possible effect of this transaction upon the future credit position of United is inseparable from an appraisal of the reasonable commercial value of the properties to be acquired, and is, of course, a matter of judgment and forecast rather than of fact. The [1776] tangible assets of United are not dissipated simply because they are paid in part for intangible market values, but only if they are expended in such manner as not to protect the carrier's future earning power. The effect of this transaction upon the

credit position of the carrier in the future will, therefore, depend upon the manner in which its earning power is affected and not upon any theoretical relation of the cost of the tangible properties to the price paid.

Of course, it is not possible to determine with absolute certainty now what will be the possible future effect of this transaction upon United's credit in the years to come since that is a matter of future development. Neither would it be possible to evaluate with exactness the future effect of the expenditure of large sums for publicity and advertising or in fact the much larger sums which are now being expended for new and larger aircraft. The future must be gauged in terms of reasonable probabilities. It can be predicted with confidence, however, that all of these expenditures will enhance or detract from the carrier's credit in exactly the same proportion in which they enhance or detract from the carrier's future earning power. The decisions underlying such transactions are basically the responsibility of management, subject only to regulatory action where managerial discretion has been abused.

If the earning power record of Route 68 for the first nine months of its operation by Western, as presented in the record, can be relied upon as a basis for future forecast, United's credit position could scarcely be affected by acquisition of this route. According to evidence in the record the route realized a profit of \$640,000 during the first nine months it was operated by Western, or an

annual profit rate of [1777] approximately \$850,000.²² An annual profit of this amount would provide a return before taxes of 10% on an average investment of \$8,500,000, or more than 20% on the \$3,750,000 purchase price to be paid by United. If it be assumed that the route may be operated with greater advantage to the public by United than by Western, an assumption which is entirely consistent with our finding that the transfer of the route to United is in the public interest, there is little reason to conclude that United's future earning power will be adversely affected by acquisition of this route.

The market valuation is essentially an appraisal of the prospects for successful operation in the future and it does not follow that the future earning power of any operating property is controlled by the original cost of the individual items of which such property is composed. Both the buyer and the seller bargain for the most advantageous price obtainable. Agreements which are concluded are based upon the informed judgment of experienced managements. The prices are paid with full knowledge that they involve risks of a character common to the activities of all types of business. But it is not the province of this Board to nullify the judgment of management in the absence of

²²It is recognized that the subsequent grant to United, TWA and American of nonstop privileges between Chicago and Los Angeles may well diminish the earning power of this route if operated by Western.

evidence that the managerial discretion has been abused. The necessary safeguards to protect the public interest from abuses which, in the past, have arisen from sale transactions in public utility properties will be provided in the conditions which we shall attach to our approval of the present agreement. [1778]

Conditions to Approval

We find that the public interest will not be adversely affected by approval of the subject agreement at the agreed price and upon the following appropriate conditions:

1. That the investment value for rate-making purposes of the properties acquired by United not be augmented by reason of their transfer from Western to United.

2. That the entire excess of the price to be paid by United over the investment value for rate-making purposes of these properties to Western as measured by the original investment cost to Western less allowable depreciation be charged to surplus immediately upon consummation of the transaction rather than booked as an asset.

In establishing the first condition to our approval, we recognize that while United expressed a willingness to exclude from its rate base the million and a half dollars allocated by it to intangibles, that carrier did not express a willingness to exclude from its rate base the additional half million dollars represented by the excess in value allocated to the tangible properties over their book value. It is

nevertheless our opinion that the statutory responsibility of this Board, to impose such conditions to its approval of agreements for the transfer of air carrier properties as will adequately protect the public interest, cannot be discharged by permitting the properties to be revalued [1779] upward to support, through an inflation of the investment rate base, potentially higher charges to the public solely by reason of the transfer. The fact that such upward revaluation of the rate base is dignified by the term "tangible" property would not lighten the burden to the public which would be required to pay the higher rates necessary to support the inflated investment.

Our second condition is based upon the conclusion that the excess of the price to be paid over the depreciated cost of the properties to Western represents payment by United for better than average earning power permissible under sound rate-making policies and is therefore an intangible value to United and its stockholders alone, and is without significance to the users of the services contemplated by the certificate. In order that the full effect of our decision may be enforced and all reasonable possibilities of abuse removed, we shall establish as a condition to the approval of the subject agreement the requirement that the entire amount of the excess of the price paid over the cost of such properties, less allowable depreciation on the books of Western, shall be charged to the surplus of United at the time the properties acquired are taken up on the books of United.

The exclusion of this excess from the accounts of United will prevent the dead hand of the past from having any appreciable effect or influence upon the future. The effect, as well as the intent, will be to assess the stockholders for the amount of the excess price over the investment value of the properties for rate-making purposes and leave the prospect for additional earnings from the expanded operation under fair and reasonable rates as the only asset accruing to the stockholders. [1780]

Such accounting treatment will provide the maximum restraint against perpetuation of any hope that the intangible values may ever be included in the investment for rate-making purposes and it will provide a desirable safeguard against the possible misinformation as to the inclusion of such items in the investment rate base which may be conveyed to the public by reason of their presence in the carrier's accounts and reports as prescribed by this Board. By eliminating the intangibles from the effect of the acquisition transaction on the earning power statistics of the carrier and of the industry, the future influence of the payment for the intangibles in the subject transaction can scarcely be materially different from the distribution of surplus as dividends.

It is urged that notwithstanding our imposition of the above condition to the approval of the present acquisition, the intangible value will nevertheless work its way into rates to burden the public users of the service. In view of the fact that regu-

latory action against allowing public utility rates to be governed by the prices on which transfers of public utility property and business have been consummated has long been the established policy of experienced and expert regulatory bodies such as the Federal Power Commission and the Interstate Commerce Commission,²³ the novel contention that a regulatory body will find itself helpless to prevent an intangible value in an exchange price from finding its way into the rates which the public must pay deserves critical examination. [1781]

The reasoning advanced in support of this doctrine of regulatory paralysis derives a certain plausibility when presented by illustrative hypotheses supported by theoretical assumptions. Applied to the present case this doctrine might be stated as follows:

If United Airlines is permitted to pay \$3,750,000 for the property and business of Route 68 on the condition that the \$1,500,000 intangible value contained in this price will not be allowed to enter into the prudent investment base in which the Board fixes the carrier's rates, the carrier's rate of return on its total investment, including the intangible value, would be reduced below the reasonable rate required to attract capital. The \$3,750,000 purchase price containing the \$1,500,000 of intangibles could not then be financed because the combined capitalization of the carrier, after exclusion of the intangible element, would not per-

²³See Appendix to this opinion.

mit a yield sufficient to attract the necessary capital. The Board under such circumstances would then be compelled, in order to insure the carrier's ability to attract capital, either to increase the carrier's rate of return or to admit the additional \$1,500,000 into the rate base. The inevitable result, the argument concludes, will be the burdening of the public users of the service with rates which will be in excess of a reasonable return.

Such plausibility as may at first appear in the above argument in support of the banishment of all profit from sale transactions depends upon certain assumptions essential to the conclusions reached. We are told that the cost of the intangibles in the purchase price, whatever the accounting treatment, will inevitably be borne by the public because of the inability of the Board to limit earnings to a fair return. Such a [1782] claim assumes that under the established method of rate-making, the rates which the Board fixes as fair and reasonable will, by reason of the mathematical accuracy of the Board's estimates, invariably result in a mathematically reasonable rate of return at all times on each carrier's investment. To assume that the many factors which combine to produce the profit of an air carrier can or should be so closely controlled as to produce a return on the carrier's investment which can be demonstrated with mathematical precision to be fair and reasonable at all times, or that the exact rate of return which will attract capital can be precisely determined for the industry and for each individual carrier, is to assume

a degree of precision in a rate-making process involving estimates of the future which is unattainable in the world of reality. It is a "delusive exactness" which underlies such an assumption.

The assumption ignores the practical fact that the uniform rates which prevail in a competitive industry such as air transportation do not and should not yield the same rate of return to all carriers that operate under them. This is due to the inevitable differences between air carriers—differences in their size and strength, the integrational advantages under which they may operate, the amount of competition to which they are subjected and the differences which will always exist between the ability and efficiency of the various air carrier managements. The rate of return allowed a public service company is not determined solely by the amount necessary to maintain existing capital and attract needed capital. It is well established that a highly efficient air carrier will be allowed to earn a higher rate of return [1783] than a less efficient carrier.²⁴

When United Airlines concludes that it is good business judgment to pay two million dollars in

²⁴Justice Brandeis pointed out in his notable dissent in the *Southwestern Bell Telephone Company Case* that while a constitutionally compensatory rate requires that the public utility be allowed to earn enough to attract capital, a fair and reasonable rate fixed by a regulatory body "may allow an efficiently managed utility much more." *Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U.S. 276, 291 (1923).

excess of the actual investment in the business and property of Route 68, it does so in the conviction that by reason of the advantages which it will enjoy in the operation of this route it will be able to realize from the operation a better than average return on the investment value of these properties under fair and reasonable rates. United also relies upon its belief in its ability to accomplish through efficient management economies of operation which will be reflected in increased earnings. This carrier is presumed to be familiar with the established policy of this Board which recognizes that differences in the return may accrue to different carriers operating under the same rates and which permits management to retain the profits of its economies as an incentive toward the accomplishment of decreased costs and increased revenues.²⁵ The incentive which the Board's rate policy holds out to air carriers to profit from economies which produce a better than average return upon [1784] investment itself invalidates the assumption that the rate-making process is an instrument of preci-

²⁵“* * * a uniform service mail rate provides added incentive for increased operating efficiency by making the rate of profit directly dependent upon each carrier's competitive performance as measured by the relation of its costs to the costs of other carriers rather than upon an allowable rate of return on the investment of each individual carrier.” Eastern A.L., Mail Rates, 6 C.A.B. 551, 555 (1945). The Board recently applied this incentive principle to the determination of a mail rate for a local-feeder service: Pioneer A.L., Mail Rate, Docket No. 2002, decided July 2, 1947.

sion which produces a mathematically precise rate of return.

These are the actual facts which describe the operation of the rate-making process of the Civil Aeronautics Board. They should make clear beyond question the reasons that moved United to conclude that it would be able to recoup the cost of the intangibles in the present price without the necessity of an appeal to the Board for an increase in its rates. If the cost of these intangibles is recouped it will be recouped out of earnings which the carrier itself, by its own efforts, has created under fair and reasonable rates fixed by this Board. If this carrier, relying upon its managerial ability and the integrational benefits which it will enjoy from its operation of Route 68, believes that it will be able to reap a better than average return under fair and reasonable rates established by the Board, the carrier should be allowed to pay a reasonable sum for that opportunity when, as in the present instance, the public interest will not be adversely affected by such action.

The conclusion that the public is certain to bear the cost of the intangible element of the purchase price in increased rates regardless of the safeguards against such a result imposed by the Board also ignores the [1785] fact that United in the present instance is not purchasing a property and business which constitutes a rate-making unit on which no more than a specified rate of return will be allowed. In support of the claim as to the speculative nature of United's payment, much is made of

United's estimate that it will be able to recoup its payment of \$1,500,000 for the intangible from the earnings of Route 68 within one year's time, thus realizing a large return upon the total purchase price.

To condemn the present transaction solely on the ground that excess earnings may be realized on this particular route would be to assume that the operations on each route segment of an air carrier system can and should be regulated in such manner as to provide the same rate of return for each route. Such assumption, however, does not square with the realities since different routes produce different earnings and the Board does not and could not attempt to restrict the earnings of each route to an equal rate of return on the investment in that route. The Board undertakes to establish a reasonable rate of return for the overall system of an air carrier which constitutes the unit for rate-making purposes and is composed of a number of routes some of which are profitable and some of which are unprofitable. United Airlines, in appraising the value of Route 68, must be presumed to have done so in full knowledge that it was buying a route which would not be a unit for rate-making purposes and that the return from that route would not be limited to the same rate of return which would be prescribed for United's system. The carrier considered that Route 68 could be developed into a very lucrative segment of its system which would be worth the price agreed upon.

On several occasions this Board in cases similar to the instant proceeding has approved transfers between air carriers where the purchase price contained [1786] elements of intangible value. In each of those cases the Board made clear its policy to exclude the cost of such intangibles from the rates fixed by the Board. It is not contended that in any one of those cases the intangibles actually found their way into rates to burden the users of the service.²⁶ The regulatory policy to which this Board and other public utility regulatory bodies of the national and state governments have adhered and which recognizes reasonable market value with its ever-present intangible elements as the basis for exchange transactions, but which refuses to allow such intangibles to be reflected in rates, cannot adversely affect the public users of the service. There is no theory of logic or principle of economics that can include in a rate base an amount that has been excluded or that can collect from the public in increased rates a cost that has been excluded by

²⁶In the rate proceeding which followed TWA's acquisition of Marquette, the Board said in this connection: "Included in 'Investments in and Advances to Affiliates' is the amount of \$313,333 representing the purchase price of the stock of Marquette Airlines, Inc. In the absence of evidence that any part of the purchase price represents actual and legitimate developmental expense incurred by Marquette, that portion of the purchase price exceeding the investment in the tangible assets of Marquette will be disallowed for present purposes." *Transcontinental & W.A., Mail Rates*, 4 C.A.B. 139, 149 (1943).

the rate-making body. An economic theory which holds otherwise is at war with realities. The intangible elements of value in the purchase price, under such a policy as that to which this Board adheres, no more enter the rate base than does the excess of market over book value of the carrier's capital stock. The effectiveness of this method of protecting the public through disallowances from both investment and operating expense in a rate proceeding would appear to be so well established in public regulatory experience as not to be subject to serious question.

What would be the probable effect upon the future development and improvement of our system of air transportation which might be expected to follow the adoption of a regulatory policy which prohibited any intangible [1787] commercial value from being included in the purchase price in transactions of this kind? It is a fact of common experience in utility regulation, which has been recognized by the Interstate Commerce Commission, that the property and business of a successful utility have considerable value and will not be sold to another unless the purchaser pays more than the net depreciated value of the tangible assets.²⁷ If successful air carrier properties are not recognized by this Board as having a market value which is somewhat in excess of the investment value

²⁷Union Bus Lines, Inc.—Purchase—Amberson, 5 M.C.C. 201, 205 (1937); New England Greyhound Lines, Inc.—Purchase—New England, 15 M.C.C. 536, 541 (1938).

of the properties for rate-making purposes, the possessor of such properties will have no incentive to transfer such properties to another air carrier who would be in a position to operate them with greater advantage to the public interest. In view of the interest which this Board has shown in the improvement of the air pattern of the nation wherever such improvement is found necessary to the economic strengthening of an air carrier and the furtherance of the public convenience—an interest which is attested by several pending investigations looking toward possible improvements in the air pattern—it would be strange indeed if the Board were now to declare a policy of hostility to any commercial profit however reasonable in any exchange transactions when the certain result would be substantially to “freeze” the air pattern of the nation to its present design and thereby thwart one of the very purposes which the Board has expressed an intention to promote.

Nor can it be said that an alternative for avoiding such a frustration of efforts to improve the nation’s air pattern would exist in the application by the Board of “pressures” upon those air carriers that refused to part [1788] with their property and business without the inducement of a profit where the Board found such transfer to be required by the public interest. One of the gravest mistakes this Board could make would be to assume that the end justifies the means and that the Board could properly do indirectly by the exertion of such compulsion what it was not permitted

by law to do directly. We know of no direct or indirect means available under the existing law by which an air carrier can be forced against its will to transfer its property, business and certificate to another air carrier. If such transfers are to be accomplished under the existing law it would seem that the inducement of reasonable market prices, except in rare instances, would be found necessary even though such prices contained sufficient commercial profit to the seller to generate a business incentive to sell. No declaration by this Board against the validity of fair commercial prices that contain an element of profit will be able to repeal the economic laws and business motives that influence exchange prices and impel business activity in a free economy.

We can find no justification for a decision which would outlaw the profit incentive from business transactions like that before us. One of the basic attributes of free enterprise is the right of a business corporation to purchase the property and business of another at a price which will permit a reasonable profit to the seller since otherwise there is no incentive to sell. Although an air carrier is a public service company and as such is subject to all necessary and reasonable regulation for the protection of the public, it does not follow that such a company must be shorn by regulatory action of a discretionary power commonly possessed by business management where the exercise of such power has [1789] not been abused.

The essence of the rule to which we adhere in the

present case is that in transactions involving the transfer of air carrier property the effect of price upon the public interest must be determined by the facts of the particular case. No inflexible rule outlawing intangibles from exchange price can act as a substitute for sound judgment based upon careful analysis of the evidence of record of the particular case. The Board in such cases cannot consistently and should not renounce its responsibility and duty to undertake such a judgment by proclaiming a doctrine which would be, in effect, a legal presumption that any exchange price in excess of the prudent investment in the tangible assets being sold is regardless of the facts and circumstances of the case, per se, adverse to the public interest.

The Board will, in the future as it has in the past, scrutinize with care the prices agreed upon in such transfers to be certain that they are not unreasonable in terms of sound commercial values, and that they will not have a detrimental effect upon the air carriers involved or in any other way adversely affect the public interest. Our established policy to exclude from rates any element of intangible value which may appear in the prices agreed upon in any such transactions and our determination to disapprove transactions involving excessive and unreasonable prices are certain to act as deterrents to the negotiation of such prices. [1790]

Acting therefore in accordance with the principles already outlined and upon the facts of the present record, we find that the price agreed upon as the

consideration in the proposed acquisition will not be adverse to the public interest since the approval of the proposed acquisition is conditioned upon the requirement that the purchasing carrier shall, upon the consummation of the present transaction, charge to its surplus that part of the purchase price which is in excess of the depreciated original cost of the tangible assets being sold and in view of our policy of excluding the cost of such excess from consideration in any manner whatsoever in future determinations in fixing the carriers' rates.

In view of all of the foregoing considerations we therefore find that the agreement dated March 6, 1947, between Western and United, and the transfer of route No. 68 from Western to United are consistent with the public interest and will not result in creating a monopoly and thereby restrain competition or jeopardize another air carrier not a party to the transaction. We further find that the public convenience and necessity require that upon its transfer to United route No. 68 be consolidated with route No. 1, and that United's certificate for route No. 1 be amended so as to prohibit United from engaging in local air transportation between Las Vegas, Nevada, and Los Angeles, California.

An appropriate order will be entered.

Ryan, Vice Chairman; Branch, Lee and Young, Members of the Board, concurred in the above opinion. Landis, Chairman, filed the attached dissenting opinion. [1791]

Appendix

Policy of the Federal Power Commission and Interstate Commerce Commission With Respect to Price in Acquisitions.

It has become customary for applicants before the Federal Power Commission to propose that any excess over the depreciated original cost be disposed of in the manner prescribed by the Commission's Uniform System of Accounts—by a charge to surplus or by amortization against income—and for the Commission to condition its approval of such transactions accordingly. See: Virginia Electric & Power Co., 4 F.P.C. 51 (1944), (Excess over original cost amounted to \$11,036,749); Union Electric Company of Missouri, 4 F.P.C. 655, 4 F.P.C. 724 (1944). (Purchase price of \$8,600,000 exceeded the estimated original cost of the property by \$892,493; order of approval required this excess to be charged immediately to earned surplus); Empire District Electric Company, et al., 4 F.P.C. 665 (1944), (Excess over original cost, amounting to \$6,793,211, charged to capital surplus); Pennsylvania Electric Company, Docket No. IT-5977, decided June 6, 1946 (Cash consideration of \$42,451,400 included an estimated amount of \$9,145,839 in excess of original cost to be transferred to accounts of purchaser and amortized over a period of 15 years); East Oregon Light and Power Company, et al., Docket No. IT-5974, decided June 28, 1946 (Base purchase price of \$2,326,000 included an amount of \$253,383, representing excess of acquisition cost over original

cost, which was required to be amortized); Southwestern Public Service Company, Docket No. IT-5994, decided August 13, 1946 (Base purchase price of \$2,135,000 included an amount of \$233,041 representing excess of purchase price over depreciated original cost, which was required to be [1792] amortized).

Compare the following cases, in which the transactions were approved subject to completion of cost studies and subsequent charge-off of any amounts by which the purchase price might be found to exceed depreciated original cost: Eastern Shore Public Service Company of Maryland, 4 F.P.C. 382 (1943); Wachusett Electric Company, et al., 4 F.P.C. 920 (1945); Worcester Suburban Electric Company, et al., 4 F.P.C. 929 (1945).

For cases upholding orders by which the Commission in proceedings subsequent to such acquisitions required public utilities to amortize the excess out of annual charges to income where the excess represented payment for intangibles such as good will, going value, nuisance value and franchise and monopoly value, "all of which were thought to be rooted in and associated with prospective earning power," see: *Pacific Power & Light Co. v. Federal Power Commission*, 141 F. (2d) 602 (C.C.A. 9th, 1944); *California-Oregon Power Co. v. Federal Power Commission*, 150 F. (2d) 25 (C.C.A. 9th, 1945), cert. den. 326 U.S. 781 (1946).

The Interstate Commerce Commission, in cases involving the acquisition of motor carriers, in 1939 inaugurated a policy of conditioning its approval

of such transactions upon the requirement that the purchasing carrier eliminate from its accounts the amount by which the purchase price exceeds the value of the physical properties acquired, either by amortization of the amount by charges to income over a specified period or by an immediate write-off where the purchasing carrier has sufficient surplus. See: Herrin Transp. Co.—Purchase—Malbrough, 25 M.C.C. 710 (1939), (Operating rights purchased for \$1,000 were required to be amortized or written off to surplus, at option of purchaser); Buckingham Transp. Co. of Colorado, Inc.—Purchase—Casey, 25 M.C.C. 667 (1939), (Operating rights purchased for \$15,000 were [1793] amortized over 10 years); Mason & Dixon Lines, Inc.—Purchase—Cox, 36 M.C.C. 475 (1941), (Excess of the purchase price of \$25,700 over the value of the physical properties, amounting to \$16,233, was charged immediately to surplus); Cox Transp. Co. — Purchase — Moore-Flesher Hauling Co., 36 M.C.C. 515 (1941), (Operating rights purchased for \$3,500 required to be amortized or written off immediately, at option of purchaser); Skeel—Purchase—Jess Kuhns & Grays Harbor Lines, Inc, 39 M.C.C. 810 (1943), 40 M.C.C. 318 (1945), (Original order, requiring that intangibles amounting to \$134,927 be written off immediately to capital accounts, modified to permit amortization over a 10-year period).

The same policy is followed by the Commission in approving acquisitions of water carriers and freight forwarders. Panama City Transit Co., Inc., Certificate Transfer, Finance Docket No. 15172, de-

cided March 14, 1946; Western Carloading Co., Acquisition by Western Carloading Co., Inc., Docket No. FF-79, decided September 11, [1794] 1941.

Dissenting Opinion

Landis, Chairman, Dissenting.

I regret my inability to concur with my colleagues in their approval of the transfer of Route 68 from Western to United for the price of \$3,750,000. I regret my enforced dissent particularly in view of the necessitous situation that presently confronts Western and the fact that the ready cash derivable from the sale of this route may be of great assistance to Western in acquiring financial stability. But the issues presented by this case far transcend in importance the immediate relief that Western may theoretically receive from the consummation of this transaction. They seem to me more significant than any issue that has been presented to the Board during my service with it. For the action of the majority of the Board makes impossible that much hoped for and much needed reordering of the air transportation map of the United States that can only be accomplished under our system of enterprise by voluntary consolidations, mergers, and route transfers. Equally unfortunate for the public interest, this action of the majority of the Board is certain in my judgment to be productive of serious and eventually disastrous inflation in values underlying air transportation that to date have in the main been kept

sound. We have seen the effects of inflation in other industries, in railroads, in public utilities, always with dire consequences to the investing and consuming public, and yet for some reason—the glibness of the accountant, the sophistry of the lawyer, or the alleged practicality of the [1795] business man—we seem still to refuse to learn that two and two make four and not six, unless of course the unseen public is made to contribute an unseen two.

1. The Theory of Public Utility Regulation.

Basic to the concept of public utility regulation is the theory that certain businesses of vital interest to the public, normally having some element of monopoly in them, are under obligation to render services to the public at reasonable rates. The services rendered are usually widespread and must necessarily be utilized by the public in the normal processes of living. This is true, for example, of telephone service, of gas and electricity, of railroad transportation and a host of other services. It was for this reason that Mr. Justice Brandeis in *The New England Divisions Case*, 261 U. S. 184, 196 (1923), spoke of railroad rates as being equivalent in their economic impact upon the public to taxes.¹ Paid initially by shippers, the cost is passed on to the wide consuming public so that an increase in rates economically speaking is little

¹Speaking for the Court in *The New England Divisions Case*, Mr. Justice Brandeis said at page 196: "What the Commission did was to raise the additional revenues needed by the New England Lines, in part, directly through increase of all rates

different from the imposition of a sales tax or some other form of impost or excise.

If this is so of the normal public utility, it is much more true in the case of a subsidized public utility. In such a case to the rate that initially has the economic effect of a tax, there [1796] is added the subsidy, which is plainly a tax going clearly to the whole of the public. The obligation to keep rates at reasonable levels is thus a more severe responsibility in the case of a subsidized industry, such as air transportation, than in the normal public utility.

For years controversy raged about the nature of a reasonable rate. That it had to cover legitimate operating costs was, of course, recognized. But it had to do more. It had to provide a reasonable return as well. In *Smyth v. Ames*, 169 U. S. 466 (1898), especially as interpreted during the inflationary years following World War I, the return was required to be on "value" and in the estimation of value reproduction cost was given prime effect.² In his concurring opinion in the

40 per cent, and in part, indirectly, through increasing their divisions on joint rates. In other words, the additional revenues needed were raised partly by a direct, partly by an indirect tax."

²The Supreme Court supported the basic principles of *Smyth v. Ames* in the following leading cases: *Newton v. Consolidated Gas Co.*, 258 U. S. 165 (1922); *Galveston Electric Co. v. Galveston*, 258 U. S. 388 (1922); *McCardle v. Indianapolis Water Co.*, 272 U. S. 400 (1926); *United Railways v. West*, 280 U. S. 234 (1930).

Southwestern Bell Telephone Case, 262 U. S. 276 (1923), Mr. Justice Brandeis exposed the fallacy of that approach, pointing out that the pursuit of that fair value theory simply enhanced costs to the public as against basing the return on original cost qualified by the concept of prudent investment. Highlighted by the inflation that the reproduction cost theory brought about in the public utility field with the consequent economic disaster that began in 1929 and accelerated in force for the next few years, and by the administrative impossibilities posited by this reproduction cost theory with a consequent strong demand for public [1797] ownership,³ Mr. Justice Brandeis' theory finally won out so that today the principles he expounded in

³The demand for public ownership was crystallized in the minority report of Commissioners Walsh, Bonbright and Adie which dissented, in part, from the Report of Commission on Revision of the Public Service Commissions Law, (New York), Legislative Document No. 75, (1930). At page 410 of the report, this minority group stated: "So clear is our conviction on this point that, if the necessity of submitting indefinitely to the "fair value" standard were to be assumed, we should be ready to recommend to your honorable body the immediate adoption of a policy looking toward governmental ownership of the utilities of New York State. Indeed, we are not at all sure that such a policy will not sooner or later become inevitable in view of the inherent difficulties of any system which attempts to combine public control with private ownership and operation."

the Southwestern Bell Telephone Case have come to be recognized as the law of the land.⁴

We must, therefore, start our thinking from certain plain premises. These are that the air transport industry has no valid claim as against the public to an opportunity to earn more than a fair return upon its investment, and, secondly, that in view of the subsidy presently given to the industry, there is a high obligation upon this Board to see that the return, inclusive of mail pay, is limited to a fair return.

It follows from these principles that values of any character attached to airline properties that are based upon the expectation of earning more than a fair return rest upon an expectation that has no foundation as a matter of legal right, but results solely from the [1798] inadequacies of the administrative process to carry out the mandate of the law. To say that such values are illegitimate would be wrong. They exist as the market demonstrates, but they exist only because of the inherent fallibilities of man and his government. It is hardly a legitimate aim of a regulatory body to sanctify these values, or worse, to write them in to

⁴See: *Los Angeles Gas and Elec. Corp. v. Railroad Commission*, 289 U. S. 287 (1933); *Railroad Commission v. Pacific Gas and Electric Co.*, 302 U. S. 388 (1938); *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U. S. 575 (1942); *Federal Power Commission v. Hope Natural Gas Co.*, 320 U. S. 591 (1944); *Panhandle Eastern Pipe Line Co. v. Federal Power Commission*, 324 U. S. 635 (1945).

the very regulatory structure dedicated to their elimination. But that is the effect of the doctrine now being announced by the majority.

Regulating the rates charged by public utilities so that they shall be reasonable and not reflect an undue return on investment is not an easy matter. Even in the case of a single public utility the problem has its difficulties. Due to variations in demand a surplus from a rate for a particular accounting year may be quite justifiable for the same rate applied during the next year may well give less than a fair return. The problem becomes immensely more difficult when the utility to be regulated is not an isolated one but an industry where the component parts are not equally strong and yet rates must be substantially uniform. This problem from the beginning has baffled the Interstate Commerce Commission with the result that rate regulation in the railroad industry has little reference to investment.⁵ [1799]

For my part I am unwilling to admit that this failure in the field of railroad rate regulation is

⁵An attempt to maintain uniform rates and at the same time limit earnings to fair returns was made by the Recapture Clause of the Transportation Act of 1920. That met an untimely death, partly due to political pressures but mainly due to the fact that the Supreme Court, with Justices Brandeis, Stone and Holmes dissenting, made it hinge as an operative matter on the impossible regulatory doctrine of "value." *Excess Income of St. Louis & O'Fallon Ry. Co.*, 124 I.C.C. 3 (1927); *St. Louis & O'Fallon Ry. Co. v. United States*, 279 U. S 461 (1929). The possibilities of some similar treatment of the airline

conclusive evidence that we too must sacrifice the public interest to the pressures of the market. True, there can be no exactness in synchronizing a fair return with an investment base. The market speculates daily upon our inability to achieve this goal. But it is wrong for us to accept defeat now with regard to our regulatory trust and admit that our own inefficiencies to hold rates and subsidy to a fair return are a sound basis for the creation of "value." We have not yet exhausted the ingenuity of man working in behalf of his fellow man, however much the market may gamble upon our weaknesses and our failures. Out of the recognition and admission of failure, there can stem hope; out of the certain prognostication of it, only defeat and death.

problem is worthy of consideration. The air transport industry receives subsidy not only in the form of mail pay but in the form of a nationally maintained network of airways whose cost in annual upkeep far exceeds that of the cost of carriage of the mail. The air transport industry, like the railroads, has its weak and strong lines. To say to this industry that we will guarantee it a fair return on investment during its developmental period and an opportunity to earn a fair return thereafter, but that returns over and above that measure shall go to the maintenance of the industry as a whole, is neither an ungenerous nor an unwise national gesture. Such a policy will deprive no investor of a legal or a constitutional right. *Dayton-Goose Creek Ry. Co. v. United States*, 263 U. S. 456 (1924). Indeed, it might well substitute stability for the unfortunate volatility that today affects the industry, as well as provide security in lieu of purposeless speculation.

2. Analysis of the Purchase Price

The purchase price for Route 68 and the accompanying properties is \$3,750,000. Physical properties transferred by Western to United amounts at most to a claim for \$2,250,000. These consist of four items: [1800]

(1) Four DC-4 aircraft at \$450,000 each, or \$1,800,000: A market value of \$450,000 each for these aircraft seems established on the record.⁶ Although the depreciated book value of these aircraft is less than \$450,000, I am content to allow this claim. Where assets are capable of being withdrawn from public use without impairing the ability of the carrier to continue to perform its public service, the carrier is presumably free to withdraw those assets from use in the public service and to

⁶The original cost of these aircraft is recorded as \$1,613,882.73, and their net book value as of March 31, 1947, was \$1,285,463.94. The record indicates that \$450,000 is approximately the market value for DC-4 aircraft. It appears that the last DC-4 aircraft sold by Douglas was priced at \$482,500. Western has recently sold two DC-4 type aircraft: one was sold to the Waterman Airlines for \$450,000 and another, without engines, to Australian National Airlines for \$380,000, the latter installing engines at an additional cost of \$72,000. It is stated that if United had sought to purchase used DC-4's the price would range from \$195,000 to \$350,000 (the latter figure being characteristic of the class of aircraft to be transferred by Western), with additional conversion costs amounting to \$163,500. An additional element of value to United is the immediate availability of Western's aircraft, since the minimum daily net income earned by a DC-4

secure for those assets whatever price the market affords. And if the purchaser is another carrier it may not be inappropriate for the second carrier to pay the market price even though the figure be in excess of the net investment cost of the equipment as shown on the books of the first carrier. The public will, of course, to the extent of the accumulated depreciation on the books of Western, have already paid for the difference between market value and depreciated cost. It should not be [1801] forced to pay this sum again. The difference between these two sums is a profit to Western, but the entire cost is an investment for United that can become a part of its rate base.⁷ Since Western

plane ranges from \$1,100 to \$2,500 and the average time required for conversion would be approximately 122 days. Thus, it is argued that the immediate availability of DC-4 aircraft would not only prevent interruption of service but would avoid a net revenue loss to United of \$134,200 to \$305,000 per airplane. While the evidence fails to show clearly that the aircraft here involved are wholly comparable to those cited in establishing a market value of \$450,000, it does appear that a fair showing as to the market value of the DC-4 aircraft has been made.

⁷It is not always possible in situations of this type to bring about such an easy recoupment of a public investment—in this case the difference between market and depreciated cost of the tangibles being transferred. In most of the public utility cases dealing with a problem of this nature, two factors are commonly present which are not present here. The first is that the property has not been and cannot be withdrawn from the public service

has been and is a "need" carrier receiving subsidy mail pay, the profit that belongs to the public can be and should be chargeable against Western's subsidy payment and as such, by relieving the public treasury, the public will be reimbursed what it already has paid. [1802]

(2) Four spare engines, hubs and blades at \$60,000: The original cost of the spare engines, hubs and blades was \$18,234.31, and their net book value as of March 31, 1947, was \$15,441.35. The agreed price at which these items are to be transferred is \$60,000, which is said to represent their replacement cost. The agreed price is thus approximately four times the net book value of the prop-

and hence there is in essence no market price. The second is that the seller is normally retiring from the public service and thus there is no method of recouping from the seller the profit that he makes in his liquidation of the accumulated depreciation. Resort is thus had to the device of requiring the excess of cost to the new buyer over depreciated cost to the seller to be carried to a property acquisition or adjustment account and amortized "below the line" as a charge on income rather than as an operating cost. This does not have the effect of recouping for the public what it already has paid in the form of depreciation. It does tend to restrain the payment of dividends in excess of normal, and call for their re-investment in the company, gradually pressing out the water that is there. Nevertheless, this device accomplishes this end only through the allowance of earnings normally in excess of what otherwise would be a fair return. But here, where a device exists for recouping for the public its investment in accumulated depreciation, it is best to utilize this device.

erty. No specific evidence was offered to support the figure of \$60,000. In the absence of such evidence, the applicant's claims with respect to these items should not be allowed.

(3) Spare parts at \$265,037: It is claimed that this price corresponds roughly with the market value of the parts. It appears that the items included on the list to be transferred to United are the high-cost items of Western's inventory rather than the low-cost items. Western testifies, however, that it has recently sold spare parts aggregating \$150,000 to \$200,000, and that these parts realized a profit of from 5 to 50 per cent over their original cost. There is further testimony that \$30,000 to

I would have no objection, however, to requiring United to carry this excess to a property acquisition account in accordance with the instructions governing account 1910 in the Uniform System of Accounts for Air Carriers. (C.A.B. Form 41 Manual (1947), 7-1). Its amortization thereafter, whether above or below the line, is of no material moment under the present circumstances since United is not now a "need" carrier and its rates are such as it chooses to establish. The excess could also be charged directly to surplus with the same results. The important thing is to deal with this excess as profit to Western and thus recoup for the public what the public already has paid. The treatment of this excess on the books of United is of less importance. If the price is actually a reasonable present cost to United, I see no objection to its inclusion in the rate base, though at the same time I might well urge rapid amortization of that excess in the interest of conservatism and because of some doubt as to the legitimacy of the alleged market values.

\$50,000 worth of items on the list of those to be transferred to United have actually been sold, Western having reserved the right to substitute other similar items, at prices representing a profit of approximately 30 per cent over cost. The record indicates that United will need only \$150,000 [1803] to \$200,000 worth of the spare parts which are being transferred but that it will be possible for that carrier to resell the parts at prices reflecting their cost to it. In the light of these facts, it can be found that the claimed price of \$265,037 is a reasonable consideration for the transfer of spare parts to United.

(4) Properties at Denver and Grand Junction at \$125,197: The record indicates that these items are priced at their costs to Western, that most of the items are new, and that their current market values equal their costs. There thus appears to be no reason to question the propriety of an allowance of \$125,197 for the properties located at Denver and Grand Junction which are to be conveyed to United.

The total purchase price that can reasonably be recognized as applicable to the physical properties transferred is thus \$2,205,675. There remains a balance of \$1,544,325.

Western argues that this balance can be absorbed by twelve designated intangible items. Ten of these can be easily disposed of as pure make-weights. They are:

(1) The assignment by Western to United

of a contract to purchase five DC-6 aircraft from the Douglas Company.

It is said that United would thereby receive earlier delivery and possibly also a lower purchase price than would be available were United to negotiate directly for the new aircraft. It is not clear that the assignment of the contract will be accomplished inasmuch as [1804] Western, United and Douglas have not yet agreed on terms. Moreover, there is no satisfactory evidence on which to base a claim predicated on the expeditious delivery of the DC-6 aircraft to United at a more favorable price than United could otherwise secure.

(2) The expense which Western will incur in revising all its permanent advertising and display materials to eliminate the Denver route.

The incidental expenses of revising advertising material do not constitute an item which will benefit United and for which United should make compensation. Other changes in Western's route system will require similar revisions in advertising and display materials; however, it will presumably not be argued that these items, commonly and appropriately charged to operating expense, have any proper place among Western's capital assets.

(3) The technical experience and data accumulated by Western in the operation of the route.

To the extent that Western's experience and data relative to route 68, not otherwise available, are given to United, the latter will benefit. Any expen-

ditures made by Western in accumulating technical experience and data are properly a part of Western's extension and development expenses for Route 68 and will be considered hereafter. Therefore, no separate allowance for this item can be made.

(4) The benefit that will accrue to United in its operation of this difficult route from Western's pioneering of the route and overcoming the public's objection to flying over the mountains directly west of Denver. [1805]

Any investment incurred by Western in the development of Route 68 will be hereafter considered in relation to extension and development costs.

(5) Certain leaseholds to which no specific dollar values are allocated.

There is evidence in the record that United will use space and facilities presently leased by Western at Denver and Grand Junction. Leaseholds may be recognized as a proper intangible element in the appraisal of property to be transferred only when appropriately supported by adequate evidence. There is no such evidence in the record. Therefore, no allowance can be made on this record for leaseholds.

(6) The considerable expense to which Western will be put in re-arranging and moving its personnel at Denver and Grand Junction to other points on Western's system, and the revision of bookkeeping and ticketing procedures and practices made necessary by the elimination of Route 68.

These expenses are in no way related to any asset value being conveyed by Western to United. Hence, no allowance for this alleged intangible is warranted.

(7) The loss that Western may incur in the sale of its DC-4 aircraft, which aircraft, it is alleged, Western would not have purchased had it not been for the projected operation of Route 68.

Even if it is assumed that Western would not have bought any DC-4's were it not for Route 68, there is no proper basis for imposing on United any costs arising from the fact that Western's venture with Route 68 is not deemed worthy of continuance by [1806] Western's present management. The expenses incurred in the operations of Route 68 and the losses, if any, which may have been sustained or which may hereafter be incurred, are part of the risks of enterprise. They are not elements of intangible value which can be recognized for any regulatory purpose. Hence, no allowance is made for this item.

(8) The cost of moving the personnel and the operational and maintenance facilities of Western's subsidiary, Inland, from Cheyenne to Denver.

These expenditures bear no such relation to Route 68 as to warrant their inclusion in the price to be paid by United.

(9) The costs of moving personnel from other parts of Western's system to aid in the

inauguration and operation of Route 68 and the cost of training their replacements.

These costs are presumably reflected in the extension and development costs which will be considered hereafter.

(10) The considerable expense for legal fees, travel expense and other costs to which Western is put in connection with this proceeding.

These costs cannot be determined on this record. Their amount would not materially influence the consideration. They seem to me, however, in the same category as costs legitimately incurred in the acquisition of a new certificate. These latter costs have commonly been recognized as extension and development expense that can originally find its way into investment. For this reason I would allow their eventual inclusion. [1807]

3. Going-Concern Value

In its effort to justify some base for the \$1,500,-000 of the purchase price not represented by tangible assets, Western argues that there is an intangible going-concern value attaching to Route 68. It asserts that, as distinguished from the acquisition of a new route, United can immediately begin to operate Route 68 with no interruption in service or in the continuity of reservations.

Going-concern value by now has been generally relegated to its appropriate position in public utility regulation.⁸ Originally there seemed to be

⁸For a portrayal of the confusion on legal and economic thinking surrounding the concept of going

considerable plausibility to the dictum uttered by the Supreme Court in 1915—"That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident." *Des Moines Gas Co. v. Des Moines*, 238 U.S. 153, 165. A statement to this effect has reality in the case of businesses operating under full and free competition with prices governed by the competitive forces of the market and not subject to control by a regulatory authority. In commercial appraisals, good will in combination with going value has often more significance than the value of the physical assets. It represents earning capacity and as such reflects itself in "value"—the market's judgment as to the extent of earning capacity that can attach to a particular group of assets. [1808]

But earning capacity, except insofar as it exceeds something in excess of a fair return, in the case of a public utility has relationship to investment. Going-concern or good will value thus represents expectations of earnings in excess of a fair return on investment. To recognize an element of value of this character and to admit it into the rate base is thus simply to pyramid against the public, government's ineffectiveness to limit earn-

value in 1930, see Report of Commission on the Revision of the Public Service Commissions Law, N. Y., Leg. Doc. No. 75 (1930), p. 35 et seq. This portion of the report was written by Mr. James C. Bonbright, whose contributions to the law and economics of public utility regulation are, perhaps, the most outstanding of the past two decades.

ings to a fair return on investment. This is more than ever true in the case of a subsidized enterprise which throughout its developmental period is guaranteed a fair return.

This, of course, is not to say that there is no difference between a going business and one—to use the words of the Supreme Court—“not thus advanced.” To establish a going business, costs have to be incurred. These costs may, depending on their nature, be capitalized subject to appropriate amortization or charged to operating expense. To the extent that they have been amortized or have been absorbed by revenues, the public has already paid for them.⁹ [1809] To then include an item for going

⁹The cost attaching to the risks of inadequate earnings in the early developmental period is automatically recognized in the percentage rate of return. The rate of return is fixed at a level calculated to permit the carrier to earn a return adequate to attract capital to the enterprise. That rate of return inevitably reflects the risks inherent in the investment, including the possibility of inadequate earnings in the early years. It is impossible to segregate these risks from other risks which influence the cost of capital and are reflected in the rate of return. A larger rate of return is ordinarily necessary in the early years of an enterprise when these risks are present. If the undertaking is successful, these risks disappear, and their disappearance is evidenced by the smaller yields at which the company's securities sell in the markets. The rate of return may then be correspondingly reduced by regulatory action. Thus going-concern value as an allowance for the losses incurred in the developmental period of the business has no place in the rate base; all such costs are fully and adequately compensated for in the rate of return.

value or good will, is not only to make the public pay twice for the same thing but to give the utility an investment against the public with the public's money upon which the public is called upon to provide a fair return. A more sinister means of extracting money from the public is difficult to imagine.¹⁰

As of today the exclusion of going value from a rate base is fully supported as a matter of law. *Los Angeles G. & E. Corp. v. Comm.*, 289 U. S. 287, 313-9 (1933); *Columbus G. & F. Co. v. Comm.*, 292 U. S. 398, 412-3 (1934); *Denver Stock Yards Co. v. U. S.*, 304 U. S. 470, 479 (1938); *Federal Power Commission v. Natural Gas Pipe Line Co.*, 315 U. S. 575, 589 (1942). Citation of these au-

¹⁰This was discussed in the report of Commissioners Walsh, Bonbright and Adie on the Revision of the State of New York's Public Service Commission's Law, *supra*: At page 361, "But the indefinite nature of the concept of going value, and the arbitrary, meaningless percentages which are so solemnly 'found' by the Commission as an expression of this value do not constitute by any means the sole objection to the present practice. A more positive objection is to be found in the fact that an allowance for going value, based on a percentage of the costs of the physical property, must result in giving to the companies the right to charge the public twice for the same thing;" and at page 362, "Surely the injustice of a system of regulation which permits a company to earn a full return on its new capital as fast as that capital goes into public service, but which nevertheless permits the company to claim an unearned increment called 'going value,' which increases as the property investment increases, must be obvious to anyone whose point of view is not hopelessly biased."

thorities [1810] should suffice to dispose of this claim.¹¹

4. Franchise or Certificate Value

Although Western claims that the other intangible values above enumerated are sufficient to support the payment of \$1,500,000 in excess of the

¹¹It is asserted to be the law that a community in acquiring a public service corporation by purchase or condemnation must make compensation "under some circumstances" for its going-concern value and its franchise. *Omaha v. Omaha Water Company*, 218 U. S. 180 (1910), and *Monongahela Navigation Company v. United States*, 148 U. S. 312 (1893), are cited in behalf of this proposition. The cases fail to support such a doctrine. *Omaha v. Omaha Water Company* involved a bill to enforce the specific performance of a contract between the City of Omaha and the Omaha Water Company for the purchase of a system of water works. The contract provided that the price should be determined by appraisers. In an earlier proceeding the appraisers had been ordered by a lower Federal Court to include in their estimated valuation "going value." They did so. In this proceeding, the City, having rejected the award of the appraisers, sought to defend against the bill for specific performance upon the grounds of misconduct of the appraisers. The Supreme Court of the United States merely held that in this case no misconduct could be found on the part of the appraisers as a whole and that the action of the appraisers in including "going value" could not be considered as misconduct. In the *Monongahela Navigation Company* case—a case decided in 1893—the United States condemned a lock and dam belonging to that company and an issue was raised as to the compensation that was

physical assets, it is plain that these claims are both groundless and sinister. But Western further asserts—an assertion joined in by United—that operating rights, the certificate itself, can be taken into consideration in determining the allowable purchase price.

Western bases its argument in this connection on the Board's opinion in the Second Marquette Case, 2 C.A.B. 409, the pertinent [1811] part of which is quoted in a footnote.¹² If that decision is to be followed, Western is correct. Moreover, if that opinion is to be followed, I see no basis for disapproval of any portion of the purchase price of \$3,750,000. If we can and must recognize "the

due. The company held a franchise from the State of Pennsylvania authorizing it to exact tolls. The Court held that the franchise had value as a right to earn money and should be paid for. In other words, it simply regarded the whole property of the company as having an earning capacity due to the existence of the franchise. This is obviously not authority for the doctrine that a franchise of a public utility has a value over and above the earning capacity of the property to which the franchise attaches.

¹²"While we believe that the Board reached the correct result in the first instance in the light of the evidence then presented and the purchase price then proposed, further reflection on the issues raised in the proceeding leads us to the conclusion that in passing upon the reasonableness of the price the Board should take into consideration all types of value which are in fact elements in the fixing of the exchange value of property. It is clear that

right to operate the route" as "an element which the parties necessarily take into consideration in determining the price which they are willing, respectively to receive and pay," there is no rational ground upon which to base any reduction in the agreed price of \$3,750,000. There is no hint of fraud or overreaching in this bargain. The parties to it were shrewd business men, each of them justifiably seeking the best bargain for his company. On this theory I know no basis upon which this Board can say the certificate value is less or should be less than the parties concluded it was. They are close to the property and far more familiar with it than this Board ever can be. [1812]

But I believe the Second Marquette Case is wrong and should be overruled. The certificate is a matter of free public grant. The holder of it acquires the right and the responsibility to operate the route as a trustee for the benefit of the public. So important is that trust to the welfare of the mail service, the commerce, and the national defense of the United States that the Congress has authorized us to provide the holder with a fair return upon the

in the sale of the property of an air line the value of the right to operate the route is an element which the parties necessarily take into consideration in determining the price which they are willing, respectively to receive and pay. The existence of such value in the exchange of property, as distinguished from value for rate-making purposes, has long been recognized by the courts and regulatory commissions." *Acquisition of Marquette by TWA—Supplemental Opinion*, 2 C.A.B. 409, 412 (1940).

investment as compensation for the performance of these services.

It would be unthinkable in the long and proud law of trusts that a trustee should be enabled to dispose of his trust for a price. It would be bad enough if that price were paid to the trustee by some third party, but it is literally sinful to permit that price to be paid the trustee by the very public that originally granted him the trust.

Such a concept is not only implicit in the Civil Aeronautics Act; but it has also been made explicit by the Congress. Section 401 (j) of that Act provides: "No certificate shall confer any proprietary, property, or exclusive right for the use of any air space, civil airway, landing area, or air-navigation facility." The language is clear, unmistakably clear.

Some support for a contrary doctrine is alleged to inhere in decisions of other regulatory commissions, particularly the Interstate Commerce Commission. With due deference to their judgments, if their judgments really are to this effect, I must decline to follow them. They are not binding on us. Certainly the roll of authorities culled from the reports of the Interstate Commerce Commission in which intangible values, three or four times those [1813] of the tangible values, have been approved is hardly a catalogue that invites emulation. As portrayed it reminds of unbridled speculation with the public the unwitting victim. Actually the picture is not so bad as portrayed. The motor car-

rier industry is a highly competitive one as distinguished from air transport. It is not subsidized. Nor has any effort been made to relate returns to investment.¹³ Instead, being as highly competitive as it is, reliance can be placed upon competitive forces to keep returns at appropriate levels.¹⁴ Even so the corporate fatalities and public losses in the motor carrier field throw considerable doubt upon the wisdom of the Interstate Commerce Commis-

¹³“We recognize that the investment of a motor carrier in tangible property is relatively small as compared, for example, with the corresponding investment of a railroad company, and that this fact must be considered in determining the return which a motor carrier may fairly be allowed to earn.” Union Bus Lines, Incorporated—Purchase—Joe Amberson, 5 M.C.C. 201, 205 (1937).

¹⁴Competition has not only placed a ceiling on charges but has so reduced rates that the Commission has acted in many instances to place a floor under rates through minimum rate orders. There is, moreover, no mechanism for giving public assistance to keep an ailing carrier in business, and no great harm to the public results if any particular carrier fails and either withdraws from business or undergoes reorganization. New carriers can readily enter upon motor carrier operations as the initial investment need not exceed the down payment on one truck, perhaps only a second-hand truck. Further competitive pressure on rates for highway carriage stems from the large volume of private carriage, for even a modest enterprise may own its own trucks and carry its own goods without the formality of securing a certificate of convenience and necessity. A more inapplicable pattern for air transportation would be difficult to find.

sion underwriting this [1814] speculative activity.¹⁵

¹⁵Indeed, one would wish that the Commission had taken more to heart the language found in Division 5 of Commissioners Eastman, Lee, and Rogers, in *Union Bus Lines, Incorporated—Purchase—Joe Amberson*, *supra*, at 204-206:

“It is well known that one of the great evils which has developed in connection with the railroads and public utilities of this country in the past, and from which both they and the public have suffered severely, has been the ill-advised purchase of properties or controlling interests therein at extravagant and unwarranted prices, in connection with the building up of large systems, and the result of this evil has been particularly serious where indebtedness has been incurred to meet the purchase price. It was to prevent this evil, among others, that in the Motor Carrier Act, 1935, we were given jurisdiction over consolidations, mergers, leases, purchases, and other methods of bringing under common ownership or control the properties of two or more motor carriers.

“If transactions of this character are to be approved and become at all common and widespread, the burden which they will place upon the motor-carrier industry must be obvious. The investment in operating rights, which initially cost little or nothing, will vastly exceed the investment in the physical property actually used in conducting the operations. We are unable to believe that such a situation is healthy or should be permitted to develop. Suppose, for example, that a system of bus operations were built up by purchases at such prices and involving such obligations and that a competitor should come into the field seeking operating rights from us on the ground that, if they were granted, it could furnish better service at lower fares because of its freedom from similar

No other administrative precedents have been produced.¹⁶ [1815]

5. Market Value of the Enterprise

It is asserted that, independent of such analyses as have been made, a route such as this has an over-all market value, that the price being paid is the market value and as such it should have our benediction. Whether a route has a market value is difficult to state. There is fortunately no extant market as yet for routes where buyers and sellers congregate and prices are quoted and made. But it can be asserted that an honestly and fairly negotiated value, such as characterized this case, is the equivalent of market value.

Certainly airline securities have market values. These values rarely coincide with book values based upon investment. Similarly the "market value" in this case does not coincide with book value, but, since it was reached by arm's length bargaining,

obligations. Would we, in such circumstances, be justified in denying the public the opportunity for better service at lower fares?"

¹⁶The Case of Matter of Powel Crossley, Transferor, and the Aviation Corporation, Transferee, Docket 6767, decided August 2, 1945, by the Federal Communications Commission has been cited. The language used in that decision is not too happy, but the case is not pertinent, for although the Commission permitted a value to be placed on a broadcasting license, the Commission was not dealing with an industry that was a common carrier and whose earnings were subject to public regulation.

it is asserted that it should be recognized and approved.

The essence of any market value is the estimation of future earning capacity or return. Its variation from book value is due to several factors.¹⁷ Among these the most important are the judgments made by interested parties that the return actually earned by the enterprise will be above or below that provided by the regulatory agency, or the judgment that the return allowed on investment by the regulatory authority is not "fair" in the sense that it is above or below the return that can be earned on investments with equated [1816] hazards in other enterprises. The money market is an integrated whole following something akin to the reverse of Gresham's Law in that it will seek its outlet at the highest possible levels of return on investment.

Thus market values in excess of book values in the public utility field represent the judgment of investors either that government will not be effec-

¹⁷In the discussion that follows contrasting market value with book value, a factor that naturally affects the relationship between the market value of a particular security and its book value is the presence of "leverage." The degree to which that is present is of course dependent upon the capital structure of that particular enterprise. But the existence or non-existence of "leverage" is not relevant to the discussion of the relationship of market value and book value above. Contrariwise, any comparison of existing actual market values of airline securities with book values for those same securities, which excludes this element of "leverage," is meaningless.

tive in holding earnings to a fair return on investment or that the fair return provided by government is at a level in excess of the return generally available elsewhere on investment with equivalent risks. When an industry is subsidized, market values below book values represent again the market's judgment as to the ineffectiveness of government to realize upon its promise of "fair" subsidy.

This is not to say that market value in excess of book value does not exist. The market itself, this very transaction, is proof of the fact that it does exist and that it has a tangible verity for which investors are willing to pay hard, cold cash. But the very essence of that market value is its speculation on the inadequacy of government in the public utility field to limit rates—or taxes, as Mr. Justice Brandeis more adequately described the economic incidence of these payments—to a fair return on investment. For us to recognize these excessive earnings as an element of value is to pyramid against the public the cost of our own regulatory inadequacies. Admitting that they exist and will exist, at least we should not fold them permanently into a rate structure and fasten permanently on the public the resulting costs. [1817]

6. The Theory of Quarantine

I believe that the majority generally accepts the validity of this reasoning. There is no intent on the part of the majority to provoke inflation in the field of air transport. But imbued by their recogni-

tion of the fact of market value, their deference to the alleged practicalities of the situation and its assumed honest and commonsense aspect, they are willing to approve this increase of price over investment and believe that by an accounting device the inflationary aspects mentioned can be eliminated.

The theory seems to be that the excess of the price over investment—some \$1,500,000—can be charged immediately to surplus and in that way never enter the rate base and thus never be a ground for higher rates or higher subsidy.¹⁸ In other words, the stockholders will pay out this \$1,500,000 and not the public.

¹⁸The only support for this theory that I have been able to discover is *Mason & Dixon Lines, Inc.—Purchase—Cox*, 36 M.C.C. 475 (1941). The case, however, never really considered the problem. *Re Virginia Electric & Power Co.*, 53 P.U.R. (N.S.) 70 (1944) is a merger case which raises different considerations. *Pacific Power & Light Co. v. Federal Power Commission*, 141 F. (2d) 602 (C.C.A. 9th, 1944) and *California-Oregon Power Co. v. Federal Power Commission*, 150 F. (2d) 25 (C.C.A. 9th 1945), cert. den. 66 Sup. Ct. 366 (1946), do not touch upon the problem. They simply authorize the Federal Power Commission to require the charge off of write-ups already on the books created by acquisition prices in excess of original cost.

The citations to the Federal Power Commission's practices, like the earlier citations to the Interstate Commerce Commission, are invalidated by the failure to recognize essential differences in the factual situations of the two industries. The Power Commission is dealing with companies long unregulated in many essential respects, with books reflecting

Before dealing with this concept, which seems to me ostrich-like, a few preliminaries must be disposed of. The first of these is the assumption that accounting is a creative science. The function of accounting [1818] is rather merely to report for the benefit of others in a limited form the story of corporate management. In faithfully reporting or threatening so to report it may well restrain management from doing what it otherwise might do were no such reporting to be made. But an accounting technique or device or theory cannot erase the economic consequences of a corporate act. They remain, whatever the reporting. True, the reporting may affect the future action of others, because man as a reasoning animal guides his actions by the data that are available to him at the time. But the fact remains that certain action has been taken, whatever the report to the public or to government may be.

In the second place, the meaning of a charge to surplus deserves exploration. In too many minds the theory persists that surplus is the equivalent of cash in the bank. Too few people recognize that surplus or deficit, as the case may be, is simply a

write-ups and securities in excess of investment. This Board has an industry where its freedom of action is not impaired by write-ups and overcapitalizations. In each of the cases noted above, the Power Commission was effecting an improvement for the public; that is, securing a write-off of water and improper intangibles; by contrast the Board is saddling additional burdens on the public, moving in the opposite direction of the Power Commission.

balancing entry between assets and other debits on the one hand and liabilities and other credits on the other. Surplus, as such, is not necessarily proof of the soundness of a business enterprise. Too frequently enterprises have been forced into bankruptcy or receivership despite large surplus accumulations for the simple reason that they cannot pay their bills.

The existence or non-existence of surplus is thus not necessarily a demonstration of financial ability on the part of an enterprise to engage in new ventures. Moreover, surpluses even where they represent an excess of current assets, have a tendency to disappear when business conditions turn downward. With the volatile and fluctuating conditions that characterize air transport these days, this tendency is more than normally manifest. Indeed, where as now the majority believes that United's fifteen million dollar surplus is proof of an ability to pay, [1819] scarcely a year ago a majority of the Board in the original opinion in the West Coast Case, 6 C.A.B. 961, declined to extend Western from San Francisco to Seattle resting its decision largely on the ground that United's financial condition was such as to make it inadvisable for the Board to subject it to increased competition.¹⁹

¹⁹United's ability to dissipate its funds may not be judged simply in terms of the recited figures. Its net income after taxes has declined steadily from \$7,024,000 for 1944, to \$4,669,000 for 1945, to \$1,804,000 for 1946, to a net loss from operations of \$1,871,596 (\$961,169 after tax refund) for the twelve months ended March 31, 1947 (the last

In the third place, I see no fundamental difference between charging this \$1,500,000 to surplus and amortizing it "below the line" over a period of time. Under the first method it is charged off against surplus accumulated as a result of past earnings; under the second method it is charged off against future earnings. If the payment constitutes a sound investment for management to make, either method should be perfectly acceptable. Indeed, if it is a sound investment, there is no reason not to charge it against surplus even if that charge creates a deficit. To incur a deficit in the hope of future and increase gains is frequently a

figures coming from Exhibit U-13). For the six months ended June 30, 1947, United reported a net loss from operations of \$4,673,165, and a net loss after tax credits of \$3,200,000. (American Aviation Daily, August 12, 1947.) United carried \$3,460,000 to surplus in 1945 but only \$771,000 in 1946. Moreover, United's cash position on which the majority relies reflects recent extensive financing which was designed to provide \$49,500,000 capital for the carrier's \$85,165,000 expansion program. In February, United received some \$12,000,000 from the sale of its 3½ per cent debentures of 1967 to two insurance companies, and over \$9,000,000 from the issuance of 4½ per cent cumulative preferred stock. It had also arranged a bank credit of some \$28,000,000 through the National City Bank, and as of June it would appear that \$9,000,000 of this credit had been drawn. All in all, this is not a picture of a carrier having surplus funds to dissipate in purchasing a certificate which the Board could award without cost to the carrier. Any funds used by United in purchasing the certificate for Route 68 may very well require the raising of new capital.

function of wise management. In other words, no choice of accounting treatment will help one evade the issue as to whether a [1820] payment of this character is a sound investment for management to make. And if it is a sound investment for management to make, why should there be an insistence that it should be charged off and not be an appropriate item in the rate base? The truth of the matter, as I see it, is that it will not be charged off in any true economic sense whatever the accounting treatment.

Before developing that thesis, this suggestion of the majority seems to me to present an inescapable dilemma. If the payment of this \$1,500,000 is to be approved by the Board in this proceeding, the Board must certainly treat that action of United's management as being efficient, honest, and economical. But at the same time the suggestion is made that the very payment should be excluded from the rate base. To justify this latter position, the payment of this money must be regarded as not being a prudent investment for United to have made in acquiring Route 68. But the Board has just found it was a prudent action for management to undertake. In the light of that finding I can see no logical reason that would justify the exclusion of this investment from the rate base. It certainly cannot be excluded on the ground that it was not a prudent cost for the Board has just formally found it to be that.²⁰ But the suggested exclusion of this payment

²⁰Perhaps this simple logic explains the paucity of any support for this accounting treatment by

from [1821] the rate base implies a finding diametrically opposed to the finding that justifies the approval of the making of the payment.

This prestidigitation may not be so palatable to the courts. If, as a result of general business losses, United ceases to be in the class of self-sufficient air carriers, the Board will have to provide it with a subsidy mail rate related to the need of the carrier which will provide the carrier with a fair return on investment. Will the Board then be able to say that what it deemed to be wise in this proceeding has now become an unwise exercise of corporate judgment and therefore is not a prudent investment? In essence the suggestion says that from an [1822]

other regulatory agencies. It is true that in TWA Mail Rate Proceeding, 4 C.A.B. 139, the Board did eliminate from TWA's rate base that portion of the purchase price of Marquette that represented intangibles and that was finally allowed in the Second Marquette Case, 2 C.A.B. 490. The inconsistency of the two actions of the Board is made manifest by the following two quotations.

From the Second Marquette Case, *supra*, at 414:

"In view of these facts now of record and the further evidence of operating results under the lease, we are unable to conclude that the new price exceeds the value of the tangible properties transferred to an extent which would make the transaction inconsistent with the public interest. Also it must be remembered, in considering all elements of the exchange value in this case, that Marquette's operating losses, in part at least, were incurred not only in the exercise of a privilege granted by public authority, but in the performance of the duties and obligations which the law attaches to such a privilege."

accounting standpoint we will treat this as an imprudent investment but, since accounting is such an esoteric science, that fact will not be so patent as to prevent us from treating it as prudent corporate action so far as the purchase of Route 68 is concerned.

Surely it cannot be argued that because this \$1,500,000 is part of United's earned surplus it is in essence stockholders' money, and as such its dissipation by the carrier will not be against the public interest. Admittedly, if the \$1,500,000 had been paid out by United to its stockholders by way of dividends, those stockholders could individually

From the TWA Mail Rate Proceeding, *supra*, at 149:

"Included in 'Investments in and Advances to Affiliates' is the amount of \$313,333 representing the purchase price of the stock of Marquette Airlines, Inc. In the absence of evidence that any part of the purchase price represents actual and legitimate developmental expense incurred by Marquette, that portion of the purchase price exceeding the investment in the tangible assets of Marquette will be disallowed for present purposes. To this end there will be eliminated from the item of investments the total price of \$313,333, it being assumed that the tangible assets acquired by petitioner are properly reflected in other asset accounts."

The action of the Board in the TWA case was uncontested probably because of the fact that, as indicated in Member Branch's dissenting opinion, it appeared that the carrier would realize an overall operating profit of 46.16 per cent and an overall net profit of 27.7 per cent after 40 per cent taxes on its total investment used and useful in scheduled air transportation.

or collectively toss that amount into the ocean without its being the concern of anyone; but for United to take such an action with funds it could distribute as dividends to its stockholders would be a gross breach of standards of honest and efficient corporate management.²¹

I come now to the question as to whether some accounting device will effectively in a true economic and not a pictorial accounting sense prevent this payment, whatever it may be called, from getting into the rate base, thus eliminating the possibility that the public and not the stockholders will be the ultimate payers of this excess \$1,500,000. If the payment gets into the rate base on the theory of going-concern value, [1823] market value or franchise value, its inflationary aspects are patent. Can an accounting technique eliminate that danger?

²¹The difference is not merely technical; it is substantial. A trustee's duty is so to manage the estate as to produce the maximum amount of income to the beneficiary and after deduction of all expenses, including the trustee's compensation, to pay the balance to the beneficiary. What the beneficiary does with payments made to him is immaterial and has no effect upon the value of his beneficial interest in the trust. Similarly, the duty of corporate management is to manage the affairs of the enterprise so as to produce income for its stockholders, and after payment of expenses including the maintenance of reserves to pay the balance to the stockholders. The funds thus paid to the stockholders belong to them for such use as they deem fit, but so long as they are in the hands of management they remain impressed with the corporate trust.

It can be assumed that United's directors in approving this payment of \$1,500,000 in excess of the tangible earning assets transferred are not acting from eleemosynary considerations nor are they seeking to dissipate the assets of United. They confidently expect a return upon that investment of \$1,500,000. If they did not cherish these expectations, the investment would not have been made. That expectation may be founded on the belief that governmental action will be ineffective in limiting the return to one that is reasonable in the light of the investment exclusive of the \$1,500,000. But if we once permit that payment to be made, governmental action will inevitably be unable to limit the return to a reasonable return on the depreciated book value of the original investment.

That fact can easily be demonstrated. Assume that six per cent is sufficient to attract money to an air carrier and that six per cent is the fair return prescribed by governmental authority. Two carriers each have an investment of \$2,000,000. The second carrier for reasons that appear sound to itself agrees to acquire the first carrier for \$3,000,000. But under the doctrine of the majority the combined rate base for the two is limited to \$4,000,000 though the acquisition of the first carrier for \$3,000,000 is approved. How can the second carrier raise \$3,000,000 for this purchase in the market? By hypothesis, six per cent is necessary to attract money into the industry and return on investment is limited to six per cent. But six per cent on \$4,000,000 is \$240,000 or only 4.8 per cent

on the \$5,000,000 actually invested in the enterprise. Since the market price for money is six per cent, \$3,000,000 worth of common [1824] stock could not be sold since its yield by hypothesis could not exceed 4.8 per cent. To acquire \$3,000,000 on a six per cent basis,²² either the rate of return must be increased in excess of six per cent, or an additional earning asset of \$1,000,000 would have to be supplied. In either case the public would have to pay.

The situation is not altered if we assume that the second carrier instead of being required to raise the money has \$3,000,000 of earned surplus to finance the transaction. That \$3,000,000 is naturally not a part of the investment upon which it is entitled or guaranteed to earn the six per cent return. It nevertheless enhances the value of the stock of the second carrier over and above that book value of the stock upon which it is entitled to earn a six per cent return. The degree to which it does this is dependent either upon the expectation of dividend payments on the part of the stockholders or upon the degree to which the future investment of this \$3,000,000 in other assets will provide earnings and thus give a return in excess of the six per cent that is due upon its \$2,000,000 rate base. If then the \$3,000,000 is invested in an asset that can, under the doctrine of the majority, only return six per cent upon an investment of

²²Only by resorting to a senior security, preference stock or debt, could \$3,000,000 of new capital be raised to finance the purchase of only \$2,000,000 in earning assets.

\$2,000,000, the overall return to the stockholders of the company suffers, its securities sag, its credit suffers, and its service may deteriorate.²³ Only two

²³It may appear that the Board could refuse to permit earnings in excess of six per cent on the asset base of \$4,000,000, but this would result in the imposition of greater rather than lesser burdens upon the public. These burdens would be manifest in three developments: (1) a deterioration in the quality of service; (2) an impairment in the credit of the carrier with a resulting inability on the part of the carrier to raise new capital; and (3) an impairment in the investment standards of the industry and an increase in the cost of capital to all carriers. Each of these inevitable results of seeking to compel the carrier to operate at an effective rate of 4.8 on the investment will do serious injury to investors in and users of air transportation.

Impairment in the quality of service may seriously undermine safety standards. Management, in these circumstances, would be under constant pressure to squeeze every possible dollar to show the profit necessary to justify paying \$3,000,000 for earning assets worth only \$2,000,000. Maintenance procedures would be compromised; desirable but avoidable expenditures would be foregone; the number of employees would be kept at a minimum. All of these developments mean a series of compromises between maintaining fully adequate service and higher than minimum safety standards on the one hand, and providing barely adequate service at minimum safety standards on the other.

The impairment in the credit of the carrier resulting from limiting earnings to an effective six per cent on \$4,000,000, or 4.8 per cent on the full investment of \$5,000,000, will be evidenced in a decline in the price of that carrier's securities. Thus it might appear that the investor is paying the cost, and indeed some of them do if they then dispose of their stock. But restricted earnings and

ways exist to avoid this result. [1825] The first is to allow the carrier to earn more than six per cent on its \$4,000,000 investment. The second is to increase that investment to \$5,000,000. In either event the public pays.

This is putting the proposition in its simplest terms. In real life the analysis is never that simple. But in real life, reserves must be maintained to keep up the dividend record as against interim ad-

a decline in the price of the stock will effectively bar the carrier from going into the investment market for new capital. It must either limp along without new capital, to the detriment of investors and users, or the regulatory agency must permit the carrier to collect greater than reasonable revenues from the users of the service. In this situation the regulatory authority almost always capitulates and rationalizes its betrayal of its public responsibility with the argument that the users are primarily interested in getting good service and that in the long run they are willing to pay even premium rates for it.

The immediate effect of permitting such speculative transactions as that here proposed is to import additional risks into the industry, increasing the cost of capital. If it attempts to keep earnings at six per cent on \$4,000,000, or 4.8 per cent on \$5,000,000, the Board will discover in its next rate investigation that the cost of capital, the primary index in determining the appropriate rate of return, is increased for all carriers. Thus the Board is faced with the necessity of recognizing an inflated return not for one carrier, but for the entire industry. Under these circumstances, it would be less burdensome for the public if the Board supinely permits the offending carrier to receive the full fair return of six per cent on the inflated investment of \$5,000,000.

versity. In real life, it may be that reserves of this type are drawn against with the consequent though perhaps imperceptible weakening of the credit standing of the carrier. In real life, three things may [1826] guard against that weakening. The first two have already been mentioned, namely, increasing the rate of return or inflating the rate base. The third is the inadequacy of government to hold actual earnings to the designated fair return. All three are equally sinister. All three mean that the public eventually pays.

To believe that these economic consequences that attend a transaction of this character can be restrained or put to naught by some accounting device is folly.²⁴ A manipulation of accounts cannot cure the fact that a dissipation of assets has taken place. And that is what remains true when \$3,000,000 has been paid out for an asset that should earn only a fair return on \$2,000,000. The Board may, of course, bury its head in the sand and pretend that this has not taken place. But it has if the Board is to discharge its high responsibility of limiting returns to a fair return on investment. Actually, it is not likely to do so. Instead, inflation is certain to take place.²⁵ [1827]

²⁴Particularly is this true of the accounting suggestions advanced by United in this case, as witness their proposed treatment of the transaction in the pro-forma balance sheet submitted by United, and attached hereto as Appendix A.

²⁵A considerable degree of confusion is introduced into this issue by thinking that a \$3,000,000 earned

I am, of course, fully cognizant of the difficulties of limiting the earnings of public utilities to a fair return on investment, especially in such an integrated and diverse field as that of transportation. And market values in excess of book or investment values reflect this difficulty. But the duty so to limit earnings rests on this Board. It may eventually, when a period of relative stability in air transportation arrives, come closer to that goal. But in the meantime it cannot and must not make achievement of that goal impossible by approving a course of conduct that over the years will inflate air carrier investment and force the public to pay again and again for certificates that it issues not only without price but with the assurance that their holders will make a fair living for conducting those operations that the certificates authorize. [1828]

surplus is stockholders' money. If a stockholder pays in excess of book value bottomed on a rate base for a share of stock and that excess, due to the capacity of government, is eliminated because the rate of return is kept to a fair return on investment, no harm is done save to that stockholder, whose survival as an entity capable of attracting money into his ventures has no public interest and evokes no public concern. His bankruptcy or loss of savings does not affect air transportation, except in the one way that reinforces the argument that has been made. He and "his cousins, and his sisters, and his aunts," may become shy of airline securities as a result of his unhappy experience. The market—or the price that airlines have to pay the public in order to induce the public to invest money in the airlines—will suffer. Something will then have to be done about this phenomenon. The only cure is again inflation. In that event, the public again pays.

7. Extension and Development Costs

Reference has been made before to the problem of extension and development costs. To the extent that these are legitimately incurred and have not been amortized and are not chargeable to revenues, they represent costs that are appropriately part of the investment. The costs of acquiring the certificate are of this character. Mere losses incurred in the operation of a route are not.²⁶

Western makes several claims for the inclusion within the purchase price of items of this character. Four categories total \$372,326, representing flight training costs of \$229,215; stewardess and dispatcher training costs of \$15,195; advertising costs of \$78,275; and pioneering and developmental costs of \$49,641.

Western's profit in the operation of this route amounts to some \$640,000, for the reported period or the equivalent of a return of nearly 39 per cent on an annual basis on the tentative investment of \$2,205,675. Most of these costs thus have already been absorbed by revenues and to admit them into the investment account for Route 68 would simply be to ask the public to pay twice to them.

The present record, however, does not definitely

²⁶As Mr. Justice Brandeis stated in *Galveston Elec. Co. v. Galveston*, 258 U. S. 388, 395 (1922): "The fact that a utility may reach a financial success only in time or not at all is a reason for allowing a liberal return on the money invested in the enterprise; but it does not make past losses an element to be considered in determining what the base value is and whether the rate is confiscatory."

permit the exclusion of all of these costs or the inclusion of some. It may be that in the category of pioneering and development costs some items exist which have not been covered in operating expenses and which are properly chargeable to the investment. To the extent that they are [1829] so chargeable, the purchase price can justifiably be increased.

The same treatment should be accorded other claims of Western that were noted before. Many of these are undoubtedly already embraced within the category of \$49,641 for extension and development costs. To the extent that these have not been previously included and are properly part of Western's unamortized investment in Route 68 and not operating expenses, they can be recognized as part of the purchase price.

8. The Consequences of the Majority Doctrine in the Field of Mergers, Consolidations and Route Transfers

The consequences of the majority doctrine are inflationary. But equally serious are its consequences in the field of mergers, consolidations and route transfers. The likelihood in this field is that either the majority doctrine will provoke a series of mergers and route transfers that will be irrational and unfortunate in the extreme because they will be dominated by the principle of selling to the highest bidder,²⁷ or else the doctrine, [1830] what-

²⁷Speaking of what has happened in the railroad field in the way of consolidations Commissioner Eastman had this to say: "These system-making

ever other initiatives for such mergers and route transfers might exist, will bring about a stalemate.

If a negotiated price honestly arrived at is to be approved by the Board irrespective of investment, the Board is inviting certificate holders to retain uneconomic and unintegrated routes to await the advent of the highest bidder. The majority doctrine is, indeed, an invitation to certificate holders to join in a game in which they inevitably win and the public inevitably loses. For the holder of the certificate so long as he holds it loses nothing, assuming proper management, since subsidy will recoup for him his operating losses. Nor under this doctrine can the Board take the position that honest, economic and efficient management calls upon the holder to dispose of the route at any proffered price for the holder can assert with little

operations through holding companies and the like violated principles of sound finance as well as the law. The record contains startling comparisons of the prices paid for stocks with their present market values. The story is so familiar that I shall not attempt to cover it here. Much of the extraordinary shrinkage is due, of course, to the economic depression. More important are the facts that in many instances the prices paid were very high even when measured by the inflated standards prevailing at the time when they were paid; that these purchases had the effect of accelerating the current inflation of security prices; that large debts were incurred in the acquisition of mere stock equities; that surplus funds were so used which ought to have been conserved; and that investors were enticed into the perilous holding-company field." *Consolidation of Railroads*, 185 I.C.C. 403, 444 (1932).

fear of contradiction that an opportunity to sell the route for a higher price is just around the corner and not to await that opportunity would be grossly inefficient management. So the public continues to pay so long as the route is held. And when the route is eventually sold, the public is again called upon to pay because of the inflation introduced by the excess of the purchase price over investment.

Under such a doctrine no criterion can ever be found to determine when management should as a matter of efficiency and economy dispose of a route instead of continuing to operate it at a loss, exclusive of subsidy. In this case the excess price is only some \$1,500,000. In the Second Marquette Case it was some \$260,000. But the next case may produce an excess of \$5,000,000 or \$10,000,000 or \$20,000,000—all bargains honestly [1831] arrived at between shrewd traders. I fail to see how the Board under the doctrine it has announced can place any limit on such values. If it should it must “re-trade” the deal in defiance of the factors that have led men to agree to pay hard money for what they have contracted to buy. For the Board to attempt to assume such a responsibility is both dangerous and impracticable.

The doctrine I advocate would relate allowable sales and purchase prices to a criterion of investment and would furnish standards against which the efficiency and economy of management could be measured and subsidy granted or denied management dependent upon its conformance to these

standards. For with such a standard in existence the unwillingness of management to dispose of an uneconomic route at a price that is fair because it is bottomed on investment would be the basis of a charge of lack of economy that would justify reduction in subsidy. In this way government could both correct the inertia of management and restrain its greed.

Indeed, there is much evidence to indicate that the doctrine of the Second Marquette Case as reaffirmed by the action of the majority in this case is responsible for the absence in the air transport field of those healthy route adjustments that should characterize it today. Admittedly particular routes and even perhaps whole systems should, in the interest of sound integration, be transferred to or absorbed by other systems. But little action in this respect is evident. The stumbling block to route transfers and mergers is not a division of opinion on the desirability of a particular [1832] rearrangement. The stumbling block instead is price. Would-be acquirers hesitate to pay the inflated prices that are asked for fear that they will not of a certainty pass that inflation on to the public. And meanwhile the administration of subsidy upholds the hands of potential sellers in their inflationary demands. And inaction results.

Only exceptional circumstances bring these transactions to the point of fruition. They may consist, as seemed true in the Pennsylvania Central-Northeast proposed merger, of an exaggerated belief in the earning capacity of the acquired routes when

consolidated with the old, so exaggerated that the inflated price thus agreed upon would in the judgment of the acquiring management be justified by a rate of return wholly disproportionate to investment and beyond the immediate power of governmental authority to cure.

Exceptional circumstances existed in this case. Western's financial stringency made ready cash a necessity. Bankruptcy was threatening and the possibilities of increased earnings in the future or increased mail subsidy were too remote and too uncertain. United, on the other hand, had been struggling for years to get into Los Angeles from the east. It had failed to do so from Salt Lake City when the Board disapproved its attempted acquisition of Western. It failed a second time when the Board awarded the Denver-Los Angeles route to Western instead of to United. At the time this opportunity presented itself United was in the midst of making its third and fourth attempts to reach Los Angeles in proceedings then pending before the Board whose outcomes were in doubt. Under these circumstances a price of \$1,500,000 over and above tangible assets might well appear reasonable. [1833]

A concatenation of circumstances such as these is rare, while the need for a better integration of the route pattern of the United States is immediate. That pattern was originally muddled by the grandfather routes. Its re-ordering is made imperative by the advent of new equipment. Built originally for the DC-3, it is inadequate for the

DC-4, the DC-6 and the Constellation, while the Convair 240's, the Martin 202's and 303's, and the Boeing 377 are already in the offing. An approach that is both practical and has due regard for the public interest is demanded.

Curiously enough that type of approach was suggested in argument by Western but with reference to its subsidiary, Inland Airlines, rather than Route 68. Western intimated that in the event the sale of Route 68 was approved, Inland would prove to be of little value to its system and Western would therefore place Inland on the block before the Board to be disposed of to such purchasers and at such prices as the Board might deem best. This was an eminently wise, just and practical approach. But such an approach naturally follows when by holding price to investment, competition in terms of price is eliminated between potential buyers. The sole criterion remaining is then that of the public interest in the most efficient integration of the airlines.

Price competition for mergers or routes has an equally baneful influence if it succeeds. Integration and the public interest cease to be guides. Instead the highest bidder controls with the result that either this Board is driven to approve a transaction that possesses doubtful merit, or to disapprove it, which leaves the industry in a stalemate.

The problem of eliminating through acquisitions, weak lines or weak [1834] segments of lines has baffled the Interstate Commerce Commission in the railroad field over thirty years. Despite almost

herculean effort progress has been negligible. And in the stagnation that has resulted doctrines of valuation have played their part. In the air transport field, however, the problem is relieved of elements of difficulty that plague the railroads. Accurate records of investment exist and inflation to date has been held to a minimum. There is moreover the powerful instrument of subsidy. That operated to underpin a weak system or a weak line so that acquisition of it is free from those elements of hazard that attend the acquisition of a weak railroad, for the property in the field of air transport carries with it the obligation of government to provide a fair return not merely, as in the case of rails, the opportunity to earn a fair return.

The results of the majority doctrine are thus not only inflationary, the majority throws away a powerful instrument that wisely used could transform our air network from the patched up quilt it now is to an integrated and economic pattern. No instrument remains now to force desirable integrations other than the threat of bankruptcy consequent upon inefficient management or insufficient subsidy. Bankruptcy is a cruel and heavy bludgeon that unfortunately admits of no planned development. The results that bankruptcy may achieve may accord with the public interest but only as a result of happenstance rather than design.

9. Conclusion

It is with some regret that I come to the conclusion that this transaction must be disapproved

unless the parties agree to reduce [1835] the price some \$1,500,000 or whatever will be necessary to reflect investment in Route 68. I cannot under the guise of the theories advanced agree to permit the parties to traffic in air certificates. There is, as Congress has stated, no private proprietary right in air transportation that can be made the subject of barter and sale—the subject of an additional claim against the public. A hundred and fifty years ago public office was also regarded as a property right. Commissions in the days of Pitt the Younger were bought and sold. But a new world took a different view of that trade. Today we unhesitatingly regard it as immoral. Some newer world may similarly come to regard this traffic in certificates of convenience and necessity as not only uneconomic but also as immoral. But until then the public will have to pay.

Apart from price, this transaction seems to me to be in the public interest. It will round out United's system, particularly in the light of our recent authorization to United to serve Los Angeles from Chicago and points east. While so long as Western retains Route 68, Western will have to maintain transcontinental ambitions that seem to me unwise and are certain to be costly.

Again Western's financial plight is such that \$3,750,000 would be of enormous help to the new management in rebuilding the system and rehabilitating it against the errors of the past. But the public should not be made to pay for those mistakes of a past management. Certainly, if the pub-

lic is to pay for those mistakes, it would be far cheaper in the long run for the public to make an outright gift to Western of \$1,500,000 rather than introduce a doctrine that will promote inflation, make against an integrated route pattern and at the same time cost the public \$1,500,000, and more. The sensible [1836] procedure to follow, if it is deemed wise to preserve Western, would be reorganization effected through a governmental loan rather than through the time-consuming and costly processes of a judicial proceeding.

Moreover, Western in giving up this \$1,500,000 is actually giving up very little. For that \$1,500,000 under any theory is profit to Western and as such is revenue under Section 406(b) of the Civil Aeronautics Act which the Board must take into consideration in fixing any need rate. The Board thus must in the last analysis charge the subsidy that Western will get and upon which it must depend with that amount, so that in the end Western's acquisition of \$1,500,000 becomes only a temporary advance against future subsidy payments.²⁸ [1837]

But irrespective of considerations that might well

²⁸An off-the-record factor tends somewhat to distort Western's position. Western has applied to the Reconstruction Finance Corporation for a loan which was to be approved on the condition that this Board would permit the transfer of Route 68 for \$3,750,000, those proceeds in the judgment of the Reconstruction Finance Corporation adding to the security of its loan. This Board, of course, declined to intimate to the Reconstruction Finance Corporation what its ultimate action on this proceeding would be. But the condition imposed by

stir some sympathy for Western the issues presented by this proceeding far transcend the importance of this case. The bankruptcy of one carrier, if that were to happen is as nothing to the potentialities of inflation that the majority doctrine invites. And temporary disruption of one or two systems is little in comparison with the failure to provide any cure for the imposed and progressive lack of integration that today characterizes the air pattern of the United States.

/s/ J. M. LANDIS. [1838]

the Reconstruction Finance Corporation has no true meaning. The \$1,500,000 will have to be counted against future subsidy to Western, so that its net available for the reduction of the loan is not increased by the receipt of that sum. True, the \$1,500,000 comes from another pocket, that of United, and the payments made by the United States in the form of subsidy will be pro rata reduced. Without the receipt of \$1,500,000 the payments would naturally not be reduced. The net available for reduction of a loan over the period remains the same, provided that Western stays in the "need" class of air carriers which it undoubtedly will.

Appendix A

United Air Lines, Inc.

Summarized Balance Sheet—March 31, 1947

(Before and After Proposed Denver-Los Angeles Route Acquisition)
(Submitted as Exhibit No. U-12)

Assets	Before	Adjustments	After
Current Assets			
Cash and Marketable			
Securities	\$13,064,800.28	(\$2,750,000.00)	\$10,314,800.23
Accounts Receivable ..	8,378,336.35		8,378,336.35
Materials and Supplies	2,700,672.68	129,755.91	2,830,428.59
Other Current and			
Accrued Assets	120,729.65		120,729.65
Total	\$24,264,538.96	(\$2,620,244.09)	\$21,644,294.87
Investments and			
Special Funds	\$12,123,506.70	(\$1,000,000.00)	\$11,123,506.70
Operating Property			
and Equipment	30,031,322.52	1,561,433.96	31,592,756.48
Non-operating Property			
and Equipment	294,515.72		294,515.72
Deferred Charges	2,779,157.96		2,779,157.96
Intangibles			
Property Acquisition			
Adjustment	514,536.06	514,536.06
Other Intangible Assets	1,544,274.07	1,544,274.07
Total Assets	\$69,493,041.86	\$69,493,041.86
Liabilities and Net Worth			
Current Liabilities	\$13,010,782.47		\$13,010,782.47
Long-Term Debt	12,000,000.00		12,000,000.00
Deferred Credits	568,282.77		568,282.77
Capital Stock	28,349,676.67		28,349,676.67
Surplus	15,564,299.95		15,564,299.95
Total Liabilities			
and Net Worth..	\$69,493,041.86		\$69,493,041.86

United States of America Civil Aeronautics Board
Washington, D. C.

Docket No. 2839

Adopted by the Civil Aeronautics Board at Its
Office in Washington, D. C., on the 25th
Day of August, 1947.

In the Matter of:

The Application of WESTERN AIR LINES,
INC., and UNITED AIR LINES, INC., Under
Sections 401, 408 and 412 of the Civil Aeronau-
tics Act of 1938, as Amended, for an Order Ap-
proving an Agreement for the Sale of Certain
Properties and the Transfer and Amendment
of a Certificate of Public Convenience and
Necessity.

ORDER

A full public hearing having been held in the
above-entitled proceeding and the Board, upon con-
sideration of the record, having issued its opinion
containing its findings, conclusions, and decision
which is attached hereto and made a part hereof;

It Is Ordered That:

1. Subject to the provisions of paragraph 4 of
this order, the agreement dated March 6, 1947, be-
tween Western Air Lines, Inc., and United Air
Lines, Inc., be and it hereby is approved;

2. The transfer to United Air Lines, Inc., of
the certificate of public convenience and necessity

dated November 11, 1944, issued to Western Air Lines, Inc., pursuant to Order Serial No. 3263, be and it hereby is approved;

3. Within twenty-one days of the date of this order, the amended certificate of public convenience and necessity dated May 19, 1947, issued to United Air Lines, Inc., pursuant to Order Serial No. E-556 shall be further amended to authorize United Air Lines, Inc., to engage in air [1840] transportation of persons, property, and mail between the terminal point Los Angeles, Calif., the intermediate points Las Vegas, Nev., Grand Junction, Colo., Denver, Colo., North Platte, Nebr., Grand Island, Nebr., Lincoln, Nebr., Omaha, Nebr., Des Moines, Iowa, Cedar Rapids, Iowa, Iowa City, Iowa, Moline, Ill., Milwaukee, Wisc., Chicago, Ill., South Bend, Ind., Toledo, Ohio, and (a) beyond Toledo, Ohio, the intermediate points Detroit, Mich., Cleveland, Ohio, Akron, Ohio, Youngstown, Ohio, Allentown, Pa., Philadelphia, Pa., and the co-terminal points New York, N. Y., and Newark, N. J., and (b) beyond Toledo, Ohio, the intermediate points Detroit, Mich., Cleveland, Ohio, Hartford, Conn., and the terminal point Boston, Mass., and (c) beyond Toledo, Ohio, the terminal point Washington, D. C.; subject to a restriction prohibiting United Air Lines, Inc., from engaging in local air transportation between Los Angeles, Calif., and Las Vegas, Nev.; and

4. Upon the payment by United Air Lines, Inc., to Western Air Lines, Inc., of the purchase price of \$3,750,000, United Air Lines, Inc., shall charge to

surplus account the difference between the total purchase price hereby approved and the original cost to Western Air Lines, Inc., of all property transferred, both tangible and intangible, less depreciation on the books of Western Air Lines, Inc., at the time of transfer; Provided, that the amount so charged shall be subject to adjustment by further order of the Board upon determination of reasonable and proper depreciation by Western Air Lines, Inc., as of the time of transfer; United Air Lines, Inc., shall file with the Board within ten days of the date of said payment a statement certifying that said amount has been charged to surplus as herein directed.

By the Civil Aeronautics Board:

[Seal] /s/ M. C. MULLIGAN,
Secretary. [1841]

Proof of Service

I hereby certify that on Aug. 26, 1947, this document was:

1. Posted on the official bulletin board.
2. Served on all parties on attached list.
3. Served on all mailing lists.

/s/ C. F. WILLIAMS,
Chief, Docket Section.

Registered:

American Airlines, Inc., Att: C. W. Jacob,
1437 K St., N. W., Wash., D. C.
T. W. A., Att: George H. Clay, 101 W. 11th
St., Kansas City 6, Mo.

Pan American Airways, Inc., Att: Henry J. Friendly, 135 E. 42nd St., New York, N. Y.

Mid-Continent Airlines, Inc., Att: J. W. Miller, 102 E. 9th St., Kansas City, Mo.

Northwest Airlines, Inc., Att: A. E. Floan, 1885 University Ave., St. Paul, Minn.

Minneapolis-St. Paul Airport Commission, c/o Albert Beitel, Morris, KixMiller & Baar, American Security Bldg., Wash., D. C.

Air Lines Pilots Assn., c/o David L. Bencke, 3145 W. 53rd St., Chicago, Ill.

Continental Air Lines, Inc., Att: Robert Purcell, Stapleton Airfield, Denver 7, Colo.

Western Air Lines, Inc., Att: Paul E. Sullivan, 6060 Avion Drive, Los Angeles, Calif.

United Air Lines, Inc., Att: S. P. Martin, 5959 S. Cicero Ave., Chicago 38, Ill.

Glen B. Eastburn, Mgr., Aviation Dept., Los Angeles C. of C., 1151 Broadway, Los Angeles, Calif.

Regular:

J. Francis Reilly, 726 Jackson Place, N. W. Wash., D. C.

Howard C. Westwood, 701 Union Trust Bldg., Wash., D. C.

John W. Cross, Cummings, Stanley, etc., 1625 K St., N. W., Wash., D. C.

Mrs. A. M. Archibald, c/o Pan American Airways, Inc., 815 15th St., N. W., Wash., D. C.

George A. Spater, Chadbourne, Wallace, etc., 25 Broadway, New York, N. Y.

J. Howard Hamstra, c/o Pan American Airways, Inc., 135 E. 42nd St., New York, N. Y.
C. Edward Leasure, 1518 K St., N. W., Wash., D. C.

James K. Crimmins, Chadbourne, Wallace, etc.,
25 Broadway, New York, N. Y.

Hugh W. Darling, 737 Pacific Mutual Bldg.,
Los Angeles, Calif.

Paul M. Godehn, Mayer, Meyer, etc., 231 S.
LaSalle St., Chicago, Ill.

S. B. Redmond, Continental Air Lines, Inc.,
550 Equitable Bldg., Denver, Colo.

Ronald C. Kinseym, Continental Air Lines,
Inc., 224 Shoreham Bldg., Wash., D. C.

Edwin McElwain, 701 Union Trust Bldg.,
Wash., D. C.

C. E. Fleming, c/o T. W. A., Hangar #2,
Washington National Airport, Wash., D. C.

Miss Carlene Roberts, 1437 K St., N. W.,
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Henry P. Bevan, Chadbourne, Wallace, etc.,
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J. Stratton, TWA, Hangar #2, Washington
National Airport, Wash., D. C.

Elihu Schott, c/o Cleary, Friendly & Cox, 52
Wall St., New York, N. Y.

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Oppenheimer, Hodgson, Brown, Donnelly & Baar, First National Bank Bldg., St. Paul, Minn.

Sheldon Cooper, Cooper, White & Cooper, 701 Crocker Bldg., San Francisco, Calif.

John T. Lorch, Mayer, Meyer, etc., 231 S. La-Salle St., Chicago, Ill. [1842]

Research Department, c/o United Air Lines, Inc., 5959 S. Cicero Ave., Chicago, Ill.

T. C. Drinkwater, c/o Western Air Lines, Inc., 6060 Avion Drive, Los Angeles, Calif.

John H. Pratt, American Security Bldg., Wash., D. C.

John M. Costello, General Counsel, Los Angeles C. of C., 1411 Penna. Ave., N. W., Wash., D. C.

Joseph S. Iseman, Chadbourne, Wallace, etc., 25 Broadway, New York, N. Y.

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Docket Section.

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Leasure.

Examiner: Wrenn B-101.

Public Counsel: Highsaw B-38, Kennedy B-38.

Charles A. Ballou B-47.

Special Mail Cards:

Hon. Hugh Butler, 125 Senate Office Bldg., Wash., D. C. [1843]

Before the Civil Aeronautics Board

[Title of Cause.]

PETITION BY THE AIR LINE PILOTS ASSOCIATION FOR A RECONSIDERATION OF THE ORDER OF AUGUST 26, 1947

September 23, 1947

The Air Line Pilots Association respectfully requests this Board grant a rehearing or reconsideration of its decision denying the petition heretofore filed by the Association requiring as a condition of the Western-United Acquisition of Air Carrier Property, Docket 2839, namely, the purchase of Western's Route No. 68 by United Air Lines, the consolidation of Western pilots on the said Route No. 68 into the United seniority list, without prejudice, in accordance with their seniority.

It is respectfully requested that the Board modify its decision in this case so as to require United Air Lines to take into its seniority list of pilots the pilots that were normally required to fly Route No. 68 as operated by Western Air Lines. This request is based upon the fact that the Board was led to believe by Western's president that Western's operations would require all of the personnel on Route No. 68 to operate other routes which in the light of new developments is not true.

The Board based its decision to deny transfer of Western pilots to United on the following which are quoted from pages 23 and 24 of the decision in this case:

I. "Western's president testified that Western had every intention of retaining the 14

flight crews operating on Route No. 68 in the event this transaction is approved and transferring them subject to their seniority."

II. "It is not clear from the testimony that the local organizations of Western and United pilots subscribe to this policy."

III. "This witness testified that Western would need more than 14 crews available from the sale of Route No. 68 in order to operate the Seattle extension and the Mexico City route." [1921]

IV. "The witness also testified that no employee of Western will be released because of this transaction."

V. "The Company will probably need more employees at Portland and Seattle."

VI. "It is clear from the record that Western's pilots will continue to be employed by Western retaining their seniority and other rights."

We have quoted specifically from the decision of this Board and, in a nutshell, it amounts to just one thing—that the Company, under oath has told this Board, and this Board relied on such testimony, that no pilot will lose his position.

As one of the bases of this Petition for Reconsideration, we must state that either the witness was ignorant of the conditions of his own line, or he wilfully suppressed facts that were in his possession in that respect, or, lastly, that conditions have so changed since the hearing in May, 1947, that at the time the decision was rendered by this

Board on August 26, 1947, the evidence pertaining to the consolidation was no longer competent for consideration by this Board. We base this upon the following particulars which will be offered in evidence by witnesses, under oath, when the Board will open this record for that purpose:

The decision of this Board was dated August 26, 1947. Western, through its president, T. C. Drinkwater, and other authorized officials, under oath, told this Board that no flight crews would be released from service. Yet, the moment after the decision was received by Western Air Lines, it posted a letter to all pilots dated September 4, 1947, within less than a week from the date of the decision, from which we quote: [1922]

Interoffice Correspondence
Western Air Lines, Inc.

To: All Pilots,

LA, DV, SL

From: Los Angeles, California.

Date: September 4, 1947.

On September 3, 1947, a decision was reached for the schedules for September 15th thru October 15. The new schedules will require 23 fewer pilots.

Therefore, effective September 19, 1947, the following pilots will be removed from the payroll:

Beach, Peterson, Flynn, Hongola, Sonner, McDougall, Jordan, Babcock, Mundy, Stone, Kennedy, Fitzgerald, Luce, Funkey, Schneider, Jacob-

son, Kettler, Critchell, Taylor, Edgerton, Mefford, Hippe, and Keys.

Beach and Peterson elected to go on furlough rather than transfer to Denver. McLaren elected to go to Denver rather than be furloughed so he and Dutton will take Beach and Peterson's places.

Each of the 23 pilots involved will be paid in full for all vacation time accrued as of September 18, 1947.

All furloughs will be handled in accordance with Western Air Lines Policy on Furloughing of Pilots.

Prior to September 18, 1947, each pilot concerned will receive a letter from the company confirming his status.

Allowance for uniforms will be in accordance with SPI attached. Any pilot bag purchased new from the company since June 1, 1947, may be turned in for a credit of \$22.84 (new price exclusive of tax).

At Los Angeles, articles turned in for credit will be given to Rhea Wineland, Stock Room Office, 2nd Floor Hangar Bldg., right of main entrance. She will make out Form 82, Stores Credit slip, giving one copy to the pilot. This copy is then to be taken to Mr. Kramber, Accounts Payable, same floor of the Hangar Bldg., and a check will be issued at that time.

In Denver, articles turned in for credit will be given to Barney Foster who will send a teletype to Mr. Kramber, Accounts Payable, Los Angeles, requesting issuance of a check to cover.

Cap emblems, wings, tool kits, oxygen masks, and cockpit keys must also be turned in to Rhea Wine-land at Los Angeles; Barney Foster at Denver.

All manuals including Jeppesen Range Book must be returned to the Ground School [1923] Office.

Need more be said as to the letter of September 4, when tested against the accuracy of Mr. Drinkwater's testimony that Western presented before this Board, that either this Board was imposed upon by Western, or that it did not know what it was talking about when the testimony was given, or, to be charitable, conditions have changed between May and September so that when they were testifying in May, they could not project what would take place in September.

In exploring further into the accuracy of the testimony, let us take the Board's decision, based on the testimony of Mr. T. C. Drinkwater and statements of Mr. James Francis Reilly, a United Air Lines lawyer, point by point.

I.

This Board stated:

“Western's president testified that Western had every intention of retaining the 14 flight crews operating on Route No. 68 in the event this transaction is approved and transferring them subject to their seniority.” (Board's Decision, page 23.)

The following is quoted from Pages 106-110 of

Volume I of the testimony of Mr. Drinkwater before the Board on May 20, 1947:

Q. "When you say there that you intend to absorb substantially all of the personnel, I just wondered why the qualification?"

A. "Of substantially?"

Q. "Yes."

A. "Because we have too many people in most places in Western Airlines, and we are trying to reduce our overhead, and reduce the number of employees wherever we can. I did not want to say that we would absorb them all because as we get further into the situation, we may find we have too many folks, but generally speaking we know we will need at least 14 flight crews to fly between San Francisco and Seattle, to say nothing of Mexico City. We know we will need larger station complement at Portland, for instance, than we have at Grand Junction, and we know we will need station personnel at Seattle, in number and experience and classifications which will certainly be analogous to our present personnel in Denver." [1924]

Q. "You estimate what percentage of your personnel will probably be taken over?"

A. "Percentage of what personnel?"

Q. "The personnel on route 68 now."

A. "You mean Denver, Grand Junction and the pilots?"

Q. "Yes."

A. "All of the flight crews,* 100 per cent of the flight crews, and I suppose, well, everybody in

*All underlining is ours.

Grand Junction who wants a job, we are going to give them a job, and everybody in Denver who wants a job that is a competent person, is going to get a job. We have to lease some people in Denver to operate Inland Airlines, of course. But aside from the general reduction in personnel which is still going on in Western Airlines, we would take care of all of these people.”

And exactly one week after the Board's decision, namely, September 4, 1947, Western wrote and published the letter already quoted in this petition on page 3 terminating twenty-three (23) pilots, effective September 19, 1947, just four (4) days after the discontinuance of all Western flights on Route No. 68.

It will be noted again that Western discontinued all flights on Route No. 68 on September 15, 1947.

The normal number of schedules on Route No. 68 has been four (4), requiring the services of thirty (30) pilots and four (4) Douglas DC-4 Skymaster airplanes. This number of pilots does not allow for vacation, sickness, etc., which would require a total of approximately thirty-two (32) pilots to fly Route No. 68 with a normal schedule.

Thirty (30) pilots is the normal number of pilots required to man the Douglas DC-4 Skymasters assigned to Route No. 68. Having this point firmly in mind, together with the testimony of Mr. Drinkwater about there being no loss from employment on the part of the Western pilots, we find that Western sold United outright in the same route sale four (4) Douglas DC-4 Skymasters. [1925]

In other words, how could any company possibly take the position that there would be no loss of pilot jobs or pilot employment rights when they know and are party to the sale of the entire Denver-Los Angeles Division, 878 miles of air route mileage, together with four (4) Douglas Skymaster DC-4 aircraft, the equipment necessary to operate a normal schedule on the route purchased by United.

On July 31, Western was operating four (4) round trips a day on Route No. 68 and on August 1, this was cut to two (2) and the equipment used on the Seattle extension, and now on the 15th when United takes over, they go back with three (3) round trips of passenger planes between Denver and Los Angeles, one cargo schedule, and additional service was the DC-6 schedule flying over Denver to Chicago, which has been in operation since about July 15. United is putting fifteen (15) additional crews to work September 15 on Route No. 68, which brings the total number of pilots on that Denver-Los Angeles route to thirty (30) or slightly more.

So it is a fact that the sale of Western's Route No. 68 and four (4) of its DC-4 Skymasters to United results in a loss of employment to Western pilots.

II.

This Board stated:

“It is not clear from the testimony that the local organizations of Western and United

pilots subscribe to this policy.” (Board’s Decision, page 23.)

Western’s pilots have been so aroused by the misstatements that were made by its president, Mr. Drinkwater, that they have individually signed petitions to have the Board reopen its case and to arrive at a fair decision on the disposition of the pilots. Attached as attachment #1 is a copy of the petitions mentioned which are signed by 137 of the pilots and are available to this Board. [1926]

For purposes of clarification, the governing structure of the Air Line Pilots Association, the Executive Board, represents all of the air line pilots and they are all represented on the Executive Board and the authority of the Board is established in a Convention Resolution from which we quote:

Sec. 1(a). “The Executive Board of the Air Line Pilots Association shall be composed as follows: The pilots on each of the air lines which are represented by the Air Line Pilots Association shall be entitled to one first pilot representative and one copilot representative sitting on the Executive Board filled annually by election within thirty days after the time that the Local Council elections are conducted, and the members of the Executive Board of the Association shall serve until replaced. * * *

Sec. 2(a). “The Executive Board shall have the power and authority to control the Association and its general management and its business affairs,
* * *

and as we all know, the Convention of any organization is the highest governing body and its recommendations and desires are not superseded.

So far as the United and Western Pilots are concerned, the following resolution passed by the Executive Board of the Air Line Pilots Association at its last meeting on May 24, 1947, is quoted:

“Resolved, That in the event of a merger, acquisition, consolidation or any other form of the acquiring by one air line of another air line or a part thereof, that the air line pilots flying on such air line or portions thereof at the time such event occurs are considered as being acquired with the air line or portion thereof and their respective accrued seniority rights remain as their possession and continue to accrue as their possession after such ownership and moreover, that such pilots and copilots flying on such air line at that time cannot be dealt with unfairly and their continued employment with the purchasing company endangered or prejudiced in any manner.

“The number of pilots affected by such event should in no case be larger or smaller than the normal number of pilots used in that operation at the time this event is approved by the C.A.B.”

At the time that Mr. Patterson and Mr. Drinkwater were in Washington preparing the petition to the C.A.B. for the transfer or sale of Route No. 68, A.L.P.A.’s Council No. 16, which [1927] includes Los Angeles based Western Air Lines crews, held their regular monthly meeting and at that time requested Mr. M. A. Wooster, Western’s System Chief Pilot, to contact Mr. Drinkwater by telephone and be sure that an arrangement was

made for the transfer of pilots along with the route and equipment and requested Mr. Wooster to state to Mr. Drinkwater that their reason for doing this was to protect the seniority rights of Western pilots and give him an opportunity to make an equitable arrangement for the transfer of Western pilots along with Route No. 68 and equipment, and not make it necessary for the A.L.P.A. to intervene in the case. After the petition was filed and before the hearings were held, Mr. Drinkwater held three separate meetings with the pilots on different days so that everyone would have an opportunity to talk to him and hear his reasons for selling Route No. 68. At these meetings the original request of the Western pilots was repeated and it was repeated again that the pilots did not want to cause any embarrassment to Western or United by becoming an intervener in this case if an agreement could be reached on the matter. At none of these meetings did Mr. Drinkwater go further than to state that if United Air Lines was willing to take the personnel he would be glad to assist in the arrangements and this attitude still remains.

III.

This Board stated:

“This witness testified that Western would need more than 14 crews available from the sale of Route No. 68 in order to operate the Seattle extension and the Mexico City route.”

(Board's Decision, page 23.)

Again we quote from Pages 106-110 of Volume I

of Mr. Drinkwater's testimony, May 20, [1928] 1947.

"Q. You estimate what percentages of your personnel will probably be taken over?

"A. Percentage of what personnel?

"Q. The personnel on route 68 now.

"A. You mean Denver, Grand Junction and the pilots?

"Q. Yes.

"A. All of the flight crews, 100 per cent of the flight crews, and I suppose, well, everybody in Grand Junction who wants a job, we are going to give them a job, and everybody in Denver who wants a job that is a competent person, is going to get a job. We have to leave some people in Denver to operate Inland Airlines, of course. But aside from the general reduction in personnel which is still going on in Western Airlines, we would take care of all of these people.

"Q. This may seem repetitious in view of what has been brought out, but what now is your position regarding the pilots on this division?

"A. As this statement here reads, Mr. Munch, we have every intention of keeping every one of the 14 flight crews presently operated on route 68 in the event the Board approves this transaction, and transferring them, subject to their seniority list and their rights to bid, to the extended operation of route 63, San Francisco-Portland-Seattle.

"I have had a series of meetings with all of our pilots, three different meetings, in order to meet with everybody in the flight department, and have

gone over this whole thing carefully with them, and explained that if the Board granted our extension of route 63 to Seattle, that was our intention.

“There was no question raised about that program in the event that the Board granted that extension.

“The Board yesterday did grant it, so I assume that takes care of your question.

“Q. In other words, there are more or less guarantees?

“A. That is true, and as a matter of fact, we will need more flight crews than the 14.”

This testimony by Mr. Drinkwater, under oath, made at the C.A.B. hearings regarding this matter, is not borne out, for he removed from the pay roll twenty-three (23) pilots and we see the reason why after studying the flight schedules for the month of July and September 15, 1947. In July, thirty (30) pilots were scheduled on the Los Angeles-Denver route and [1929] twenty-eight (28) pilots on the Los Angeles-San Francisco route, making a total of fifty-eight (58) pilots. Now on September 15, 1947, after selling the four (4) airplanes, twenty (20) pilots are being scheduled on the Los Angeles-San Francisco route and eighteen (18) on the San Francisco-Seattle extension with no pilots on Los Angeles-Denver, Route No. 68. The new total is thirty-eight (38) which means that twenty (20) fewer pilots were being employed on the Los Angeles-Seattle route on September 15 than were on the Los Angeles-Denver and Los Angeles-San

Francisco routes in July due to the sale of airplanes.

In addition, the Mexico City route is not in operation, no one knows when it will be operated and Western does not own the airplanes with which to fly it.

IV.

This Board stated:

“The witness also testified that no employee of Western will be released because of this transaction.” (Board’s Decision, page 23.)

We quote from Pages 106-110 of Volume I of the testimony of Mr. Drinkwater, May 20, 1947.

“Q. You estimate what percentage of your personnel will probably be taken over?

“A. Percentage of what personnel?

“Q. The personnel on route 68 now.

“A. You mean Denver, Grand Junction and the pilots?

“Q. Yes.

“A. All of the flight crews, 100 per cent of the flight crews, and I suppose, well, everybody in Grand Junction who wants a job, we are going to give them a job, and everybody in Denver who wants a job that is a competent person, is going to get a job. We have to leave some people in Denver to operate Inland Airlines, of course. But aside from the general reduction in personnel which is still going on in Western Airlines, we would take care of all of these people.

“Q. With respect to any personnel that was dropped as the result of the route sale, you don’t

think the board should put any restrictions on that, but you would accept them if any conditions were put in? [1930]

“A. Well, it depends on what they were, but the question is entirely academic because there are not going to be any personnel dropped as the result of route sale. There may be some dropped because they are incompetent, or we have too many folks, but not any dropped because of the route sale.”

The termination of Western pilots has been covered in paragraphs I and III. In addition to pilots losing their jobs, 14 Western stewardesses were also terminated on or about September 19, 1947. Ground personnel at Grand Junction and Denver who were employed on Route No. 68 have been terminated in an unknown percentage; it is believed to be very close to 100 per cent.

V.

This Board stated:

“The Company will probably need more employees at Portland and Seattle.” (Board’s Decision, page 23.)

Again we quote from Pages 106-110 of Volume I of the testimony of Mr. Drinkwater, May 20, 1947.

“Q. If you are unable to absorb any of the personnel who might be left jobless as the result of this sale, do you have any plans with respect to taking care of that personnel?

“A. Well, there won’t be any. The last question covers that.

“Q. Well, you have no plans, then, because you don’t contemplate any?

“A. That is right. As a matter of fact, we will need more people probably. I am sure we will need more people. We will need more people to staff up in Portland and Seattle than we presently have in Denver and Grand Junction, let us put it that way.”

As to the numbers of Western personnel in Portland and Seattle, no operating personnel, with the exception of the dispatchers are in either of these cities. The operation and maintenance of Western’s equipment at Seattle and Portland is performed entirely under a contractual arrangement with Northwest Airlines.

VI.

This Board stated.

“It is clear from the record that Western’s pilots will continue to be employed by Western, retaining their seniority and other rights.”

(Board’s Decision, page 24.) [1931]

We quote from Pages 165-168 of Volume I of the testimony of Mr. Reilly, June 30, 1947.

“Mr. Branch: Would you say that a pilot located there, who has lived at Colorado Junction or whatever it is, at some point on this route, wants to stay there and another carrier acquires the route, and takes over everything, that his previous employer had, that he doesn’t have some right to consideration under the new management?

“Mr. Reilly: I sure do.

“Mr. Branch: You say he has to get his interest protected by his old employer and maybe leave his route and his home and go somewhere else?

“Mr. Reilly: I certainly do think that he is it. If he is going to be without a job, or without employment, or was going to suffer in seniority on the route which he left, or the route that the company who operated the route previously. But no one of these pilots is going to lose a job. If they want to bid 63 and I assume they are the top seniority pilots or they wouldn't be operating 68—that they would bid on that route.”

It has already been shown that Western, eager to conclude this sale, has lead the Board into this erroneous conclusion.

On Pages 165-168, Volume I of Mr. Reilly's argument, June 30, 1947, Mr. Reilly had the following to say:

“It seems to me that what the answer is, as a practical matter, is that the juniors in seniority back of these fellows on route 68 want to move up 14 points. I don't blame them for that. But I think you have a balance there.

“It seems to me it will probably work out. It all depends. Let us assume, Mr. Branch, that we could handle, that we have room to place in our organization maybe for one or two of these pilots; if there was an invalid in the family, or something like that, we could work something out.”

In reply, Mr. Branch made the following observation:

"If I am correct in this, Mr. Reilly, we have always sought to have that rather difficult problem taken care of before we render a final decision."

In Mr. Branch's statement it reflected the well preceded manner in which problems of this character have been worked out in the past. Mr. Reilly's answer to Mr. Branch was:

"I think you are correct. But all of those cases involve the taking over of whole companies. It did not involve the mere taking over of a segment of a route of the system of the carrier from whom the route is being acquired." [1932]

Mr. Reilly chooses to term Route No. 68, 878 miles of air route and a sizeable part of the entire Western system, merely as a segment of a route and seeks to use this to differentiate between the manner and method of solving the pilot personnel problem by belittling it and avoiding it. This does not in any way meet or solve the problems involved.

Let us pursue this thought a few steps further in a logical and common sense manner. All air lines are made up of so-called segments, in fact, the larger air lines in this country are, for the most part, made up of a number of segments, some of them many. In all such instances, since the air line pilots have been effectively organized and capable of self-representation, the pilots went with the acquisition or the acquiring of the various parts that make up most of our present air lines.

Now let us take the same procedure in reverse. Here we have a case of an air line that appears as being disintegrated by sale of various segments.

Route No. 68 has already been sold and the Western pilots have been deprived of their positions and seniority in the sale.

Carrying this line of procedure a step further we again go to the decision on page 12 and find the following:

“In this connection, the president of the United stated that United would be willing to purchase route No. 35 at a price ‘set by the Board.’ ”

This indicates the sale of another segment of Western's property. What is to happen to the pilots on Route No. 35? Carrying this thought to its logical conclusion, there is nothing to prevent the entire line from being sold piece by piece which presents the question: “What about the employment rights and seniority of the Western pilots?” If the policy that has been initiated on Western is carried forward, it will mean that air line property can change hands completely and the pilots on such air line, familiar with the route through long years of experience and making their homes at the division points and taking their place in the economical structure of [1933] our country, have lost completely their employment and all rights relating thereto.

The Air Line Pilots Association again reiterates its original position as included in the decision:

“* * * that the pilots on the Denver-Los Angeles division should be taken over by United and given full employment and seniority rights without prejudices.”

Wherever there is the sale, acquisition or taking over of any air line by another air line in part or in its entirety, this policy must be followed or confusion, injustice, and labor trouble will result and conditions created that cannot possibly be in the public interest. The air line pilots, or any other employees for that matter, must not be permitted to become the pawns in air line property purchased, or acquiring of such property, which is sure to become an actuality unless the recommendations, well preceded in railroad and other modes of transportation as is pointed out in the original Petition of Intervention of the Air Line Pilots Association, in this case, are followed.

It is a well considered opinion of the Air Line Pilots Association that certain witnesses in this case inadvertently or otherwise misadvised the Board as to the true circumstances involved in the purchase of Route No. 68 by United Air Lines from Western Air Lines, and that this Board is entitled to know the truth and the whole truth about all the conditions, happenings and circumstances involved in this purchase so that they will be in a position to modify the pilots' part of their decision in this case to bring it in line with precedent and in accordance with the evidence and facts that actually exist.

The Air Line Pilots Association is prepared to offer witnesses who will substantiate each and every allegation made in this petition. We believe that a reargument and reconsideration will demonstrate the iniquity of the companies' position, and that justice requires that this Board should not depart from well established principles of approving a sale of whole or [1934] part of an air line without adequately protecting the pilots.

Respectfully Submitted,

/s/ DAVID L. BEHNCKE,

President, Air Line Pilots Association, International. [1935]

Verification

New York, N. Y.—ss.

David L. Behncke, being duly sworn, deposes and says: that he is the President of the Air Line Pilots Association, International, and has specific authority to submit this petition on behalf of the Association; that he has read and is familiar with the contents of the foregoing petition for reconsideration; that he intends and desires that in granting or denying said petition the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained

in the said petition is true and that no such statement is misleading.

/s/ DAVID L. BEHNCKE.

Subscribed and sworn to before me this 23rd day of September, 1947.

.....,
Notary Public.

Certificate of Service

It Is Hereby Certified that a copy of the foregoing petition for reconsideration has this day been served upon each party to the above-entitled proceeding.

Dated at New York, N. Y., this 23rd day of September, 1947.

/s/ DAVID L. BEHNCKE,

President, Air Line Pilots Association, International. [1936]

Attachment #1

Petition of Western Air Lines Pilots and Copilots in the matter of "Western-United, Acquisition of Air Carrier Property."

Whereas the Civil Aeronautics Board in Docket No. 2839 approved of a proposed acquisition of property and business of Western Air Lines, Inc., to United Air Lines, Inc.

Whereas such acquisition did not approve as a condition of such acquisition the Western Air Lines

Pilots and Copilots on the Denver-Los Angeles Division which condition was urged by the Air Line Pilots Association as intervener.

Whereas the Board states "It is not clear from the testimony that the local organizations of Western and United Pilots subscribe to this policy."

Whereas contrary to testimony of witnesses in this case (Docket No. 2839), and as a result of this transaction 30 pilots are displaced, 23 pilots are being furloughed, 12 pilots are being demoted from Reserve Captain to Copilots positions, 23% of scheduled routes formerly flown is reduced, and as 4 Douglas DC-4 type aircraft were sold as a part of Route No. 68, I hereby protest the approval of carrier parties without the Western Air Lines Pilots on the said Denver-Los Angeles Division be taken over and given full employment and seniority rights without prejudices by the said purchasing company.

Signed.....,

(Pilot or Copilot.)

Council No.....Western Air Lines, Inc.

Received September 24, 1947. [1937]

United States of America, Civil Aeronautics Board
[Title of Cause.]

PETITION FOR LEAVE TO INTERVENE

The Airline Mechanics Division, UAW-CIO, hereby moves for leave to intervene in the above-captioned proceeding, pursuant to the Regulations of the Civil Aeronautics Board, Serial No. 374, Section 285.6 (b):

1. Petitioner and Western Air Lines, Inc., are the parties to a current labor agreement executed January 1, 1947, covering the class or craft of Air-line Mechanics employed by Western Air Lines, Inc.

2. Petitioner has a substantial interest in the subject matter of the above proceeding by reason of its status as the collective bargaining agent for the ground personnel of Western Air Lines, Inc.

3. Petitioner asserts that it will be bound by the order entered and/or to be entered by the Board in the above-captioned proceeding in such manner as it may affect the rights and privileges of the employees of Western Air Lines, Inc., who are covered by the labor agreement hereinbefore mentioned.

4. Petitioner alleges that as collective bargaining agent for the employees of Western Air Lines, Inc., aforementioned, it has a property and financial interest in the above-captioned proceedings which has not been adequately represented by existing parties to the proceeding.

5. Petitioner alleges that it did not move to intervene within the time required by the Regulations of the Civil Aeronautics Board, Serial No. 374, Section 285.6 (2) for the reason that it had been apprised prior to the commencement of the above-captioned proceedings that Western Air Lines, Inc., did not seek any action which would affect the rights and privileges [1939] of the employees covered by the labor agreement hereinabove mentioned. Subsequent to the entry of the Board's order, which was entered on August 26, 1947, petitioner was advised, contrary to the information

which previously came to the attention of petitioner concerning the employees covered by its labor agreement with Western Air Lines, Inc., and contrary to the position taken by Western Air Lines, Inc., during the course of the hearings in the above-captioned proceeding, that Western Air Lines, Inc., had taken affirmative action concerning the rights and privileges of employees covered by the labor contract hereinbefore mentioned, in discharging a substantial number of said employees.

6. Petitioner makes this application so that it may be afforded an opportunity to assert its contentions with the respect to the application made in this proceeding, insofar as it may affect the rights and privileges of the employees covered by the labor agreement hereinbefore mentioned, and insofar as said application may affect and be consistent with the public interest.

Wherefore, Petitioner herein moves for leave to intervene in the above proceeding for the purpose of presenting to the Board such applications and evidence as in the circumstances may be deemed mete.

/s/ DOMINIC Di GALBO,

International Representative
UAW-CIO. [1940]

VERIFICATION

State of New Jersey,
County of Essex—ss

Dominic Di Galbo, being duly sworn, deposes and says: that he is the International Representative of the United Automobile Workers of America, UAW-

CIO, and has specific authority to submit this petition on behalf of the Airline Mechanics Division, UAW-CIO; that he has read and is familiar with the contents of the foregoing petition for leave to intervene; that he intends and desires that in granting or denying said petition the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his information and belief, every statement contained in the said petition is true and that no such statement is misleading.

/s/ DOMINIC Di GALBO.

Subscribed and sworn to before me this 23rd day of September, 1947.

/s/ SIDNEY REITARAN,

An Attorney at Law of
New Jersey.

Certificate of Service

It Is Hereby Certified that a copy of the foregoing petition for leave to intervene has this day been served upon each party to the above-entitled proceeding.

Dated at Newark, New Jersey, this 23rd day of September, 1947.

/s/ DOMINIC Di GALBO,

International Representative,
UAW-CIO.

Received September 25, 1947. [1941]

United States of America,
Civil Aeronautics Board

[Title of Cause.]

PETITION BY AIRLINE MECHANICS DIVISION, UAW - CIO, FOR RECONSIDERATION OF THE ORDER OF AUGUST 26, 1947, AND REHEARING

Application is hereby made by the Airline Mechanics Division, UAW-CIO, to this Board, to grant a rehearing and/or reconsideration of its decision dated August 26, 1947, approving the agreement of sale in the above-captioned matter, for the reasons and arguments herein set forth.

The Board's decision, pages 23 and 24, recites portions of the testimony and its conclusions from the testimony which guided the Board in making its decision. It is respectfully submitted that this testimony is not supported by the present state of the facts and therefore the inclusions drawn therefrom are erroneous and presently inapplicable. We quote from the Board decision:

“The witness¹ also testified that no employee of Western would be released because of this transaction* and that every competent employee in the employment of the company at Grand Junction and Denver will continue with Western, that the company will probably need more employees at Portland and Seattle than the present employees at Denver and Grand

¹The witness referred to is Western's president, T. C. Drinkwater.

*Underscoring supplied.

Junction and that Western will pay the employees' moving expenses . . . ”

“It is clear from the record that Western's pilots will continue to be employed by Western retaining their seniority and other rights and that every other competent employee on Route No. 68* who would be retained by the company if this transaction had not been proposed will continue to be employed by the company with full rights . . . ” [1943]

“Therefore, since there is nothing that would indicate that any of the rights of Western's present employees on Route No. 68 will be prejudiced by the acquisition and operation of that route by United, there appears to be no reason for any condition of that nature by the Airline Pilots Association.”²

This application is hereby made to vacate and/or modify the Order of the Board for the reasons that:

I. New matter has arisen since the hearing which, with due diligence, the petitioner could not have known or discovered prior to the time of hearing; and

II. Compliance with the Board's Order would be inconsistent with the public interest; violative of a current labor agreement between Western Air Lines, Inc., and Petitioner; and prejudicial to the

*Underscoring supplied.

²The condition urged by the Airline Pilots Association was that the pilots of Western on Route No. 68 be consolidated into United's seniority lists.

rights and privileges of Western's ground personnel of its Route No. 88.

I. New Matter Has Arisen Since the Hearing Which With Due Diligence the Petitioner Could Not Have Known or Discovered Prior to the Time of Hearing.

During the course of the hearings in this matter Mr. T. C. Drinkwater, president of Western, testified that Western had every intention of retaining its personnel on Route No. 68, including Denver and Grand Junction. The following is quoted from pages 106-110 of Volume One of the testimony of Mr. Drinkwater before the Board on May 20, 1947:

Q. "When you say there that you intend to absorb substantially all of the personnel, I just wondered why the qualification."

A. "Of substantially?"

Q. "Yes."

A. "Because we have too many people in most places in Western Air Lines, and we are trying to reduce our overhead, and want to say that we would absorb them all because as we get further into the situation, we may find we have too many folks, but generally speaking we know we will need at least fourteen (14) flight crews to fly between San Francisco and Seattle, to say nothing of Mexico City. We know we will need larger station complement at Portland, for instance, than we have at Grand Junction, and we know we will need station personnel at Seattle, in number and experience and classifications which will certainly be analogous to our present personnel in Denver."

(2) The condition urged by the Airline Pilots Association was that the pilots of Western on Route No. 68 be consolidated into United's seniority [1944] lists.

Q. "You estimate what percentage of your personnel will probably be taken over?"

A. "Percentage of what personnel?"

Q. "The personnel on route No. 68 now."

A. "You mean Denver, Grand Junction and the pilots?"

Q. "Yes."

A. "All of the flight crews, 100 per cent of the flight crews, and I suppose, well, everybody in Grand Junction who wants a job, we are going to give them a job, and everybody in Denver who wants a job that is a competent person, is going to get a job. We have to leave some people in Denver to operate Inland Air Lines, of course, but aside from the general reduction in personnel which is still going on in Western Air Lines, we would take care of all of these people."

Q. "With respect to any personnel that was dropped as the result of the route sale, you don't think the Board should put any restrictions on that, but you would accept them if any conditions were put in?"

A. "Well, it depends on what they were, but the question is entirely academic because there are not going to be any personnel dropped as the result of the route sale.* There may be some dropped because they are incompetent or we have too many

*Underscoring supplied.

folks but not any dropped because of the route sale."

Q. "If you are unable to absorb any of the personnel who might be left jobless as the result of this sale, do you have any plans with respect to taking care of that personnel?"

A. "Well, there won't be any. The last question covers that."

Q. "Well, you have no plans, then, because you don't contemplate any?"

A. "That is right. As a matter of fact, we will need more people, probably. I am sure we will need more people. We will need more people to staff up in Portland and Seattle than we presently have in Denver and Grand Junction, let us put it that way."

Approximately one week after the Board's decision, Western commenced termination of its ground personnel as a result of the sale of Route No. 68 so that at the present time all of the ground personnel required to maintain Route No. 68, to wit: 43, have been laid off.

In the above testimony by Drinkwater, he assured the Board that with the extended operation of Route No. 63, San Francisco—Portland—Seattle, Western would have ample employment for all of its personnel formerly operating on Route No. 68. It should be noted that none of Route No. 68's personnel have [1945] been absorbed in the extension of Route No. 63 and that Western's maintenance at Portland and Seattle is being performed by other airline personnel. Since the date of the Board's

order, United has hired approximately three (3) Western ground personnel.

It is apparent from the foregoing that the evidence submitted to the Board, and upon which this Board rendered its decision, was either incomplete, inaccurate, intentionally misleading, or that since the date of the last hearing and/or the rendering of the Board's decision, the facts and circumstances have so changed that the evidence relating to the disposition of the personnel is no longer supported by the facts.

Prior to the hearings in this proceeding petitioner was apprised of Western's position as outlined in its testimony before this Board, which position was consistent with petitioner's thinking concerning Western's personnel on Route No. 68. This obviated any necessity for petitioner's appearing in the proceeding as an intervenor to seek to establish any conditions upon which the sale should be approved. Since the close of the hearing all of the forty-three (43) ground personnel employed by Western on Route No. 48, and members of petitioner, have been terminated.

II. Compliance With the Board's Order Would Be Inconsistent With the Public Interest, Violative of the Existing Labor Agreement Between Western and Petitioner and Prejudicial to the Rights of Western's Employees on Route No. 68.

It should be noted that Route No. 68 was a very important adjunct of Western's operations. Reference is made in the Board's decision to the possibility of the purchase by United of Route No. 35

now operated by Western. It may be Western's intent to ultimately seek a consummation of the sale of Route No. 35. If the Board fails to reconsider its decision insofar as it affects the disposition of the personnel of Route No. 68, in light of the recently discovered evidence, which may represent an original intention of Western, a dangerous precedent will be established. If this decision is not modified and [1946] Western should subsequently pursue the possibility of the sale of its Route No. 35 and advise the Board that it intends to absorb the personnel on Route No. 35, whereas in fact it has no such intention, the Board would be confronted anew with the present problem. Unless this scheme on the part of Western is "nipped in the bud," what will become of the seniority and employment rights of the ground personnel presently employed by Western?

Section 32 of the labor agreement between Western and Petitioner provides that where a reduction in force shall take place, an employee may exercise his seniority at his own station or may replace the employees with the less system seniority in his own classification or any lower classification.

Western's termination of the ground personnel formerly assigned to Route No. 68 and contrary to the position taken by Western at the hearings in this matter, has given rise to a violation of the contract terms mentioned above. If the parties execute compliance with the Board's Order it may be necessary to institute a series of law suits to enforce the provisions of the agreement between West-

ern and Petitioner, with considerable inconvenience to the parties to the agreement.

It is well known in the air transportation industry that employee's seniority rights and privileges and other indicia of security have been won after long and protracted bargaining discussions. These rights and privileges are not to be lightly cast aside by parties to any proceeding in their desire to achieve their personal objective. Casual disregard of the obligations necessary to maintain the high level of employment standards, regardless of the objective, may result in a serious labor dispute which would be harmful to the uninterrupted flow of air traffic. Such conduct should not be permitted as inconsistent with the public interest.

Western's conduct since the entry of the Board's order herein has been seriously prejudicial to the rights of its employees, formerly employed on Route No. 68. The ground personnel, in addition to a substantial number of the pilots have been deprived of their economic security. This does not only [1947] affect the lives of the men employed, but also the welfare and safety of their families. All of this because of Western's failure to abide by its position stated under oath to this Board. To permit this condition to remain unmodified would be highly prejudicial to the welfare of all ground personnel in the airline industry, and disruptive of peaceful and satisfactory labor relations.

Conclusion

It is respectfully requested that the Board modify its decision in this proceeding to require as a condi-

tion of the sale that Western Air Lines, Inc., either retain, with full seniority and other rights and privileges, the ground personnel employed on Route No. 68, previously operated by Western Air Lines, Inc.; or in the alternative require United Air Lines, Inc., to take into its seniority list of ground personnel, the ground personnel formerly employed by Western Air Lines, in its operation of Route No. 68.

Petitioner further urges that a re-hearing be ordered in this matter to enable it to produce witnesses to testify as to the matters and things herein set forth.

/s/ DOMINIC Di GALBO,
International Representative,
UAW-CIO. [1948]

Verification

State of New Jersey,
County of Essex—ss.

Dominic Di Galbo, being duly sworn, deposes and says: that he is the International Representative of the United Automobile Workers of America, UAW-CIO, and has specific authority to submit this petition on behalf of the Airline Mechanics Division, UAW-CIO; that he has read and is familiar with the contents of the foregoing petition for reconsideration and/or re-hearing; that he intends and desires that in granting or denying said petition the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; and that, to the best of his infor-

mation and belief, every statement contained in said petition is true and that no such statement is misleading.

/s/ DOMINIC Di GALBO.

Subscribed and sworn to before me this 23rd day of September, 1947.

/s/ SIDNEY RUTMAN,
An Attorney at Law of
New Jersey.

Certificate of Service

It Is Hereby Certificated that a copy of the foregoing petition for reconsideration and/or rehearing has this day been served upon each party to the above-entitled proceeding.

Dated at Newark, New Jersey, this 23rd day of September, 1947.

/s/ DOMINIC Di GALBO,
International Representative,
UAW-CIO.

Received September 25, 1947. [1949]

United States of America,
Civil Aeronautics Board

[Title of Cause.]

ANSWER OF PUBLIC COUNSEL TO THE
PETITIONS OF LABOR ORGANIZA-
TIONS FOR RECONSIDERATION OF
THE ORDER OF AUGUST 26, 1947

IV.

Recommendations of Public Counsel

It would appear that the parties have made no serious effort to work out by voluntary collective bargaining any provisions for the protection of employees displaced as a result of the transfer. It is recommended therefore that before the Board passes upon the petitions for reconsideration it request the parties—Western, United, ALPA, the Brotherhood, UAW, and any other representatives of the employees—to endeavor to work out for presentation to the Board and incorporation in an amended order an arrangement for the protection of Western's displaced employees.

If the parties fail to reach a voluntary agreement, it is recommended that the Board order a further hearing on the subject of what conditions, if any, should be imposed for the protection of such displaced employees.

September 29, 1947.

Respectfully submitted,

/s/ JAMES L. HIGHS AW, JR.,

/s/ WILLIAM F. KENNEDY,

Public Counsel.

Received September 29, 1947. [1956]

United States of America,
Civil Aeronautics Board

[Title of Cause.]

PETITION FOR STAY OF BOARD ORDER

On August 26, 1947, the Civil Aeronautics Board rendered its decision and order in the above-captioned matter, approving the agreement of sale dated March 6, 1947, between Western Air Lines, Inc., and United Air Lines, Inc.

On September 23, 1947, petitioner herein, Air Line Mechanics Division, UAW-CIO, made application for leave to intervene in the above-captioned proceedings, and further made application by petition to this Board for reconsideration and rehearing with respect to its order aforementioned.

On September 29, 1947, the Public Counsel rendered his answer to the petition for reconsideration and rehearing in which said Public Counsel recommended that before the Board pass upon the petition, the parties endeavor to work out for presentation to the Board and incorporation in an amended order, an arrangement for the protection of Western's displaced employees.

Petitioner has on this date notified Western Air Lines, Inc., and United Air Lines, Inc., with copies to Air Line Pilots Association and Brotherhood of Railway and Steamship Clerks of its desire to confer with them concerning an arrangement for the protection of Western's displaced employees, copy of which notice is annexed hereto and made a part hereof,

Wherefore, petitioner prays:

1. That this Board shall grant a stay of the

effectiveness of its order of August 26, 1947, pending the outcome of petitioner's [1959] request for a conference with Western Air Lines, Inc., and United Air Lines, Inc., and the results thereof.

2. That this Board grant such other relief as in the circumstances may be deemed mete.

/s/ DOMINIC Di GALBO,

International Representative,
UAW-CIO. [1960]

Notice

To: Western Air Lines, Inc.

United Air Lines, Inc.

Re: Western-United, Docket No. 2839.

In conformance with the Recommendations of the Public Counsel of the Civil Aeronautics Board, we hereby request a conference for the purpose of endeavoring to work out for presentation to the Board and incorporation in an amended order an arrangement for the protection of Western's displaced employees. Will you please communicate with our Mr. Gillespie at 5851 Avalon Blvd., Los Angeles 3, Calif., to arrange a mutually convenient time and place.

ISSERMAN & KAPELSOHN,
Counsel to Air Line Mechanics Division, UAW-
CIO, 24 Commerce Street, Newark, N. J.
cc to Air Line Pilots Association, Brotherhood of
Railway and Steamship Clerks.

Received October 3, 1947. [1961]

Before the Civil Aeronautics Board

[Title of Cause.]

MEMORANDUM OF UNITED AIR LINES,
INC., IN REPLY TO THE PETITION OF
AIR LINE PILOTS ASSOCIATION FOR
RECONSIDERATION OF THE BOARD'S
ORDER OF AUGUST 25, 1947

United Air Lines, Inc., requests the Board to deny the petition of the Air Line Pilots Association.

United is informed and believes that no pilot of Western Air Lines, Inc., was furloughed, or his employment terminated, as a result of the acquisition of Route 68 by United from Western.

United is informed and believes that any change in the status of any Western pilot, subsequent to March 6, 1947, was due to circumstances and conditions unrelated to the transaction involved in this proceeding.

Like all other air carriers, Western in recent months has found it necessary to furlough and terminate substantial numbers of employees of all classifications, including pilots. These furloughs and terminations would have been required whether the Board approved or disapproved the joint application of United and Western herein.

United believes that it has a high responsibility to protect the employment status and seniority of its own pilots; and that the [1964] Board should give substantial consideration to the rights of these pilots in its determination of the pending petition of the Air Line Pilots Association.

Like all other air carriers, including Western, United has been forced in recent months to terminate and furlough substantial numbers of its personnel, affecting approximately 2500 employees; 479 of which were on leave of absence or furlough status on September 30, 1947. Of this latter group, 37 are copilots. Due to the normal reduction in schedules during the winter season (including removal of at least one schedule from Route 68), and other factors, United in the very near future will be required to furlough substantial additional employees. It is United's present view that it may have a surplus of approximately 100 pilots at November 15, 1947.

Unquestionably, any order of the Board seeking to require United to absorb any of Western's pilots will affect adversely and seriously the status and seniority of United's pilots; particularly if the pilots absorbed have long tenures of service with Western.

Under the resolution¹ adopted by the Executive Board of the Air Line Pilots Association on May 24, 1947 (after the public hearing was concluded), apparently it is the position of the Association that United should be required to absorb the Western pilots who were flying Route 68 on August 25,

¹"The number of pilots affected by such event should in no case be larger or smaller than the normal number of pilots used in that operation at the time this event is approved by the C.A.B." (Page 7 of petition of Air Line Pilots Association.)

1947, the date on which the Board approved the acquisition of that route by United from Western. Since Western was operating two schedules over Route 68 on that date, United is informed and believes that a maximum of seven crews were employed on that route. Certainly, that would be the maximum number [1965] of pilots which United, under any circumstances, might be asked to absorb; and that number would be reduced by the number of pilots who have accepted employment on other routes of Western, or who have resigned, or who might desire to remain with Western, or who might not desire to be employed by United. In other words, under any circumstances, only fourteen pilots would be involved, and if any of those fourteen who were flying Route 68 on August 25 have accepted assignment on other Western routes, or have resigned from Western, or for any other reason do not desire to be employed by United, the number of pilots, fourteen, would be correspondingly reduced.

All of the equities of the matter, and the inherent rights of United's pilots, militate strongly against the Air Line Pilots Association using this transaction as a device to force United to absorb any of Western's pilots; particularly where the status and seniority of such pilots have not been affected adversely as a result of United's acquisition of Route 68.

United concedes that the rights of employees are an element of the public interest to be considered in a transaction such as before the Board in this proceeding; but it is only one of the elements to

be considered and weighed with all of the other public interest factors involved, including the present "shake-down," dynamic, evolutionary economic transition period through which the entire air transport industry is passing. Furthermore, the rights of United's personnel are as much an element of the public interest as the rights of the personnel of Western. United contends vigorously that the facts and circumstances in this case do not warrant the prejudice and jeopardy of the rights of United's pilots which would result if the petition of the Air Line Pilots Association were granted in whole or in part. [1966]

Conclusion

The public interest does not require the modification of the Board's order of August 25, 1947, as requested by the Air Line Pilots Association.

The petition of the Air Line Pilots Association should be denied.

Respectfully submitted,

/s/ JAMES FRANCIS REILLY,

Attorney for United Air
Lines, Inc.

San Francisco, California, October 6, 1947.

Received October 7, 1947. [1967]

Before the Civil Aeronautics Board

October 6, 1947.

[Title of Cause.]

MEMORANDUM OF UNITED AIR LINES,
INC., IN REPLY AND OPPOSITION TO
PETITIONS OF AIRLINE MECHANICS
DIVISION, UAW-CIO

The Airline Mechanics Division, UAW-CIO, hereinafter referred to as "Mechanics," has filed herein two petitions: (1) for leave to intervene and (2) requesting the Board to reconsider and modify its Order of August 25, 1947.

United Air Lines, Inc., requests the denial of the petition of the Mechanics for leave to intervene on the following grounds:

(a) The time within which such petitions may be filed, under the Board's procedural rules and regulations, expired long before the petition of the Mechanics was filed;

(b) The petition does not set forth sufficient grounds upon which the Board may reasonably permit a waiver of its rules and regulations;

(c) The mechanics had notice of, and full opportunity to participate in, all of the proceedings held in this case; and

(d) The rights of Western's employees, including mechanics, were an issue in this proceeding; and were represented adequately and fully by (1) The Brotherhood of Railway and

Steamship Clerks and (2) Public [1969] Counsel.

In so far as the petition of the Mechanics requesting modification of the Board's Order of August 25, it is United's position that the said petition should be denied.

United is informed and believes that none of the employees of Western referred to in the petition of the Mechanics suffered loss of employment, status or seniority as a result of United acquiring Route 68 from Western; that status of these employees, if affected adversely in recent weeks, had nor has any relation whatsoever to the transaction involved in this proceeding; that Western, like all other air carriers, has been forced to make substantial operating expense reductions in all phases of its operations, resulting in substantial reductions in all classifications of its personnel; and that it was therefore necessary for Western to furlough and terminate some ground personnel, including mechanics, irrespective of the Board's final decision with respect to United's proposed acquisition of Route 68 from Western.

Like Western and all other air carriers, United in recent months has been forced to make substantial reductions in its personnel affecting approximately 2500 employees. As of September 30, United had 479 persons on furlough and/or leave of absence status, including 28 shop mechanics, 2 building maintenance mechanics, 33 line mechanics, 31 Mechanic's helpers, 3 apprentice mechanics, and 1 helper apprentice mechanic. United contends that

the jeopardy and prejudice to these employees which would result if United were asked to absorb any of Western's employees would be adverse to the public interest.

Furthermore, because of the normal reduction in schedules (including removal of at least one schedule from Route 68) in the winter season, and other factors, United, unquestionably, will be forced to terminate and/or furlough additional employees in the immediate future. [1970]

United contends that the rights of its employees are paramount to the rights of Western's employees in this transaction under all consideration of the public interest, particularly since the rights of Western's employees if affected adversely recently were so affected for reasons totally unrelated to the acquisition of Route 68 by United from Western.

Conclusion

The petition of Airline Mechanics Division, UAW-CIO, for leave to intervene should be denied.

The petition of Airline Mechanics Division, UAW-CIO, seeking modification of the Board's Order of August 25, 1947, should be denied in all respects.

Respectfully submitted,

/s/ JAMES FRANCIS REILLY,

Attorney for United Air
Lines, Inc.

Received October 7, 1947. [1971]

Before the Civil Aeronautics Board

October 10, 1947.

[Title of Cause.]

ANSWER OF WESTERN AIR LINES, INC.,
IN OPPOSITION TO THE PETITION OF
AIR LINE PILOTS ASSOCIATION FOR
RECONSIDERATION OF THE BOARD'S
DECISION

Western Air Lines, Inc., opposes the petition of Air Line Pilots Association for reconsideration.

ALPA's petition for leave to intervene, dated March 15, 1947, was granted on April 1, 1947, by Order Serial Number E-409. ALPA was represented at the hearing by counsel, filed a brief with the Board and participated in oral argument. Throughout the proceeding, ALPA was accorded the same rights and privileges as a party and had the opportunity of presenting such evidence and such arguments as it may have deemed necessary or pertinent to refute or counteract the evidence and argument presented by the applicants. [1974]

The record supports the Board's decision, which is responsive to the overall public interest.

No showing has been made by ALPA that the overall public interest would be served by any modification of the decision or by a different decision.

ALPA's petition should be denied.

Respectfully submitted,

GUTHRIE, DARLING &
SHATTUCK,

Attorneys for Western Air
Lines, Inc.

Received October 14, 1947. [1975]

Before the Civil Aeronautics Board

October 10, 1947.

[Title of Cause.]

ANSWER OF WESTERN AIR LINES, INC.,
IN OPPOSITION TO THE PETITIONS
OF AIR LINE MECHANICS DIVISION,
UAW-CIO, FOR LEAVE TO INTERVENE,
FOR RECONSIDERATION AND FOR A
STAY OF THE BOARD'S ORDER

Western Air Lines, Inc., opposes the three separate petitions of Air Lines Mechanics Division, UAW-CIO, for leave to intervene, for reconsideration and for a stay of the Board's order.

The petition for leave to intervene was not filed within the time required by the applicable rules and regulations and good cause has not been shown excusing the default.

Petitioner is not a party entitled to petition for reconsideration. In addition to this procedural defect, the petition fails to show good cause for reconsideration of the decision.

Petitioner is not a party entitled to seek a stay order and has failed to show good cause for a stay order. [1978] In addition, the order having been fully executed, no act remains unperformed which could be the subject of a stay order.

The record supports the Board's decision, which is responsive to the overall public interest.

No showing has been made by Air Line Mechanics Division, UAW-CIO, that the overall public interest

would be served by any modification of the decision or by a different decision.

The three petitions of Air Line Mechanics Division, UAW-CIO, should be denied.

Respectfully submitted,

GUTHRIE, DARLING &
SHATTUCK,

Attorneys for Western Air
Lines, Inc.

Received October 13, 1947. [1979]

Before the Civil Aeronautics Board

October 10, 1947.

[Title of Cause.]

PETITION FOR PERMISSION TO FILE OUT
OF ORDER A REQUEST THAT THE
BOARD RECONSIDER AND MODIFY ITS
ORDER OF AUGUST 25, 1947

Now comes your petitioner, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and respectfully petitions the Board that it be permitted to file Out of Order and request the Board to reconsider and modify its order of August 25, 1947.

I.

In support of its request for permission to file Out of Order your petitioner avers:

For some reason or other, which your petitioner

has no way of ascertaining at this time, it was not served with a copy of the Board's opinion and Order of August 25, 1947, notwithstanding the fact that petitioner had filed a brief on June 19, 1947, in this matter. It was not until several days after the order had been issued that it became indirectly informed of the issuance of the order. Immediately upon receipt of this indirect notice your petitioner promptly requested a copy of the order, which was furnished [1982] by the Public Counsel, same being received in Cincinnati on September 13, 1947.

II.

In support of its request that the Board reconsider and modify its order of August 25, 1947, wherein it approved the transfer of certain operating rights, previously held by Western Air Lines, Inc., to United Air Lines, Inc., but found it unnecessary to include any protective measures for employees of either carrier who are or may be adversely affected by the transfer of said operating rights, your petitioner avers:

As one of the standard railway labor organizations with its principal offices in the city of Cincinnati, Ohio, it represents a substantial number of the employees of the Western Air Lines, Inc.;

Since it filed its petition on June 19, 1947, your petitioner has been certified as the representative, for the purpose of collective bargaining, of the craft or class of clerical, office, stores, fleet, and passenger service employees of the Western Air Lines, Inc. (N.M.B. Certification, Case R-1850, September 9, 1947). As the bargaining representative of such

employees of Western Air Lines, Inc., it now represents 59 employees of the Denver facility of the Western Air Lines, Inc. Prior to the certification in N.M.B. Case R-1850, 37 of the present Denver employees were unrepresented and 22 were represented by the UAW-CIO and came under that organization agreement with the carrier. The latter employees, now represented by petitioner, will continue to be covered by the terms of the UAW-CIO Agreement and entitled to all the rights extended by said Agreement until it [1983] is changed under the procedure of the Railway Labor Act, or until such time as a new working agreement is negotiated between the carrier and the petitioning Brotherhood, covering the craft or class mentioned above.

The statement by Mr. T. C. Drinkwater, President of the Western Airlines (p. 106 of the Transcript), and upon which the Board based its decision of not invoking protective measures (p. 24 of Opinion), to the effect that "substantially all" of the personnel of Route 68 would be absorbed by United after it had acquired the operating rights of Western on Route 68, has proven not to reflect the real situation as it exists at this time. The contrary is true. According to statements now a part of the Record (petition of the Air Line Pilots Association for a Reconsideration of the Order of August 26, 1947), several employees represented by that organization have already been adversely affected as a result of the transfer of the operating rights mentioned herein. It follows, therefore, that if operating employees of said Western Air Lines, Inc.,

have already been adversely affected, divers numbers of employees now represented by your petitioner will be adversely affected as soon as the transfer is fully consummated, since it is hardly conceivable that if operating employees are adversely affected (and said operating employees comprise but a small percentage of the total employees), other than operating employees will not be affected.

III.

Further, the adverse effect to employees of United Air Lines, Inc., or Western Air Lines, Inc., will not be confined solely to the Denver operation, even though the direct changes may be confined to [1984] Denver, for the reason that divers numbers of employees at Denver will be forced to change their places of residence, accept positions paying a lower rate of pay, etc., if the testimony of T. C. Drinkwater (p. 107 of the Transcript) is correct when he said:

“Everybody in Denver who wants a job who is a competent person is going to get a job. We have to leave some people in Denver to operate Inland Airlines, of course. But aside from the general reduction in personnel which is still going on in Western Air Lines, we will take care of all of these people.”

The personnel referred to by Mr. Drinkwater were those located in Denver, Colorado, and Grand Junction, Colorado, and the Air Line Pilots.

Therefore, your petitioner prays that the Board grant its request to file out of order for reasons

stated in paragraph I and that its request that the Board reconsider and modify its order of August 26, 1947, to include the protective features requested by this petitioner in the brief which it filed with the Board on June 19, 1947, be granted. If the Board reassigns this case for further argument your petitioner requests that it be notified of said hearing and be permitted to introduce such testimony as is pertinent to the issues.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

By /s/ GEO. M. HARRISON,
Grand President. [1985]

State of California,
County of San Francisco—ss.

George M. Harrison, being first duly sworn upon his oath, deposes and says that he is the Grand President of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; that he has read and is familiar with the contents of the foregoing application; that he intends and desires that in granting or denying the relief requested, the Board shall place full and complete reliance on the accuracy of each and every statement contained therein; that he is familiar with the facts set out, and, that to the best of his information and belief, every statement contained in the

foregoing application is true and no statement is misleading.

/s/ GEO. M. HARRISON,
Grand President.

Subscribed and sworn to before me this 10th day
of October, 1947.

[Seal] /s/ MARGARET M. LYNCH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires Feb. 10, 1948.

Received October 13, 1947. [1986]

United States of America, Civil Aeronautics Board
Adopted by the Civil Aeronautics Board at Its
Office in Washington, D. C., on the 25th Day
of August, 1948.

[Title of Cause.]

ORDER No. E-1894

The Board having in Order Serial No. E-772, dated August 25, 1947, approved the transfer of Route 68 and certain physical properties by Western Air Lines, Inc., to United Air Lines, Inc.; and

The Board having received a petition for reconsideration from the Air Line Pilots Association, a petition for leave to intervene, a petition for reconsideration and a motion for a stay of the Board's Order Serial No. E-772 from the Airline Mechanics Division, UAW-CIO, and a petition for permission to file a request for reconsideration from the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees,

each requesting reconsideration of Order Serial No. E-772 and the modification of said order so as to impose conditions for the protection of employees alleged to have been adversely affected by the transfer of Route 68 and certain physical properties; and [1988]

It Appearing to the Board That:

1. Each of said petitions alleges that employees of Western Air Lines, Inc., have been adversely affected by the transfer of Route 68 and of certain physical properties by Western Air Lines, Inc., to United Air Lines, Inc., approved in Order Serial No. E-772;

2. The Board's original decision denying the requests to impose protective conditions for the benefit of displaced employees of Western Air Lines, Inc., was predicated upon a finding that the employees of Western Air Lines, Inc., would not in fact be adversely affected by the transfer of Route 68 and certain physical properties;

3. The Board in a conference held on December 5, 1947, recommended to Western Air Lines, Inc.; United Air Lines, Inc.; the Air Line Pilots Association; the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the Airline Mechanics Division, UAW-CIO, that an effort be made to work out by voluntary agreement a basis for treatment of employees of Western Air Lines, Inc., alleged to have been adversely affected by the transfer of Route 68 and certain physical properties by Western Air Lines, Inc., to United Air Lines, Inc.;

4. The Board has now been advised by the par-

ties of the failure of efforts to work out such a voluntary agreement;

5. The employees of Western Air Lines, Inc., represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and by the Airline Mechanics Division, UAW-CIO, may have been adversely affected by the transfer of Route 68 and of certain physical properties by Western Air Lines, Inc., to United Air Lines, Inc.; that by reason of this fact, said Brotherhood and the [1989] Airline Mechanics Division, UAW-CIO, have a property or financial interest in this proceeding, that the interests of such employees can be most effectively represented by allowing said Brotherhood and the Airline Mechanics Division, UAW-CIO, to participate as parties in this proceeding, and that participation by said Brotherhood and the Airline Mechanics Division, UAW-CIO, as parties would not unduly broaden the issues or delay the proceeding;

6. The motion for a stay of Order Serial No. E-772 was filed after the transactions approved in said order had been consummated;

It Is Ordered That:

1. This proceeding be and it hereby is reopened to determine:

(i) whether any employees of Western Air Lines, Inc., have been adversely affected as a consequence of the transfer of Route 68, and certain physical properties by Western Air Lines, Inc., to United Air Lines, Inc.; and

(ii) what conditions, if any, for the protec-

tion of employees of Western Air Lines, Inc., who may have been adversely affected should be attached to the Board's approval of said transfer of Route 68 and certain physical properties granted in Order Serial No. E-772, dated August 25, 1947;

2. The issues stated in paragraph 1 of this order be assigned for hearing before an Examiner of the Board at a time and place hereafter to be designated;

3. The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and the Airline Mechanics Division, UAW-CIO, be and they hereby are made parties to this proceeding; [1990]

4. The motion of the Airline Mechanics Division, UAW-CIO, for a stay of Order Serial No. E-772, be and it hereby is denied.

By the Civil Aeronautics Board:

[Seal] /s/ FRED A. TOOMBS,
Acting Secretary.

Served August 26, 1948. [1991]

Proof of Service

I hereby certify that on Aug. 26, 1948, this document was served on all parties listed below.

/s/ M. B.,

Service and Mail Clerk.

Registered:

Western Air Lines, Inc.; Att: Paul E. Sullivan, 6060 Avion Drive, Los Angeles, Calif.

United Air Lines, Inc.; Att: S. P. Martin,
5959 S. Cicero Ave., Chicago 38, Ill.

James L. Crawford, Attorney, Brotherhood
of Railway and Steamship Clerks, etc.; Broth-
erhood of Railway Clerks Bldg., Cincinnati,
Ohio.

Airline Mechanics Division, UAW-CIO; Att:
Dominic Di Galbo, International Representa-
tive, Newark, N. J.

Regular:

Hugh W. Darling, 737 Pacific Mutual Bldg.,
Los Angeles, Calif.

Paul M. Godehn, Mayer, Meyer, etc., 231 S.
La Salle St., Chicago, Ill.

J. Francis Reilly, Commonwealth Bldg., 1625
K St., N.W., Wash., D. C.

John T. Lorch, Mayer, Meyer, etc., 231 S. La
Salle St., Chicago, Ill.

D. P. Renda, 6060 Avion Drive, L. A., Calif.

Special Messenger:

Burgess—POD.

Delany—POD.

Hawkins—POD.

Bulletin Board.

Docket Section.

Stough.

Leasure.

Examiner: Wrenn B-101.

Public Counsel: Highsaw B-38, [1987] Ken-
nedy B-38.

United States of America, Civil Aeronautics Board
Washington, D. C.

Docket No. 2839

In the Matter of:

WESTERN-UNITED SALE OF ROUTE No. 68

TRANSCRIPT OF REOPENED HEARING

Monday, November 14, 1949

The above-entitled matter came on for hearing, pursuant to notice, at 10 o'clock a.m., before Thomas L. Wrenn, Examiner.

Appearances:

F. HAROLD BENNETT,
3148 West 63d Street,
Chicago, Ill.,

Representing Air Line Pilots Association.

D. P. RENDA,
6060 Avion Drive,
Los Angeles, Calif.,

Representing Western Air Lines.

JAMES FRANCIS REILLY,
959 South Cicero Avenue,
Chicago 38, Ill.,

Representing United Air Lines.

JAMES L. CRAWFORD,
1015 Vine Street,
Cincinnati, Ohio,

Representing the Brotherhood of Rail-
way Clerks.

WILLIAM F. KENNEDY, and
FREDERICK W. BECHTOLD,
Public Counsel, Civil Aeronautics [2030]
Board.

Proceedings

Examiner Wrenn: Let us proceed, gentlemen.

By order dated August 25, 1948, Serial No. E-1894, the Board reopened Docket No. 2839 for further hearing on two points set forth in the first paragraph of the ordering clause. This time and place has been assigned for further hearing in the proceeding.

I would like for record purposes to have you enter your appearances at this time.

Who appears for Air Line Pilots Association?

Mr. Bennett: F. Harold Bennett.

Examiner Wrenn: Who appears for the Brotherhood of Railway Steamship Clerks?

Mr. Crawford: James L. Crawford.

Examiner Wrenn: Who appears for the U.A.W.-C.I.O.?

(No response.)

Examiner Wrenn: Who appears for Western Air Lines?

Mr. Renda: D. P. Renda.

Examiner Wrenn: Who appears for United Air Lines?

Mr. Reilly: James Francis Reilly.

Examiner Wrenn: Who appears for Council No. 57, United Air Line Pilots?

Mr. Bennett: I am also representing them, Mr. Examiner.

Mr. Reilly: I assume Mr. Bennett will show what authority he has for representing Council 57?

Mr. Bennett: Well, they are here.

Mr. Reilly: That is all right. That is all I want to know. [2032]

Examiner Wrenn: Who appears for Public Counsel?

Mr. Kennedy: William F. Kennedy and Frederick W. Bechtold.

Examiner Wrenn: Are there any matters that should be disposed of before we proceed with the taking of evidence?

Mr. Bennett: The only thing I can think of is if there is some question about my representation of the intervenor as members of the Air Line Pilots Association; as I stated before, the Council representatives are here and if someone desires they may make a statement for the record that the Air Line Pilots Association, as represented by myself, is also representing them.

Examiner Wrenn: It raises a question in my mind as to what purpose they have to intervene here.

Mr. Bennett: As a matter of fact, they are not going to present any evidence.

Mr. Reilly: They have filed a petition for intervention, Mr. Examiner, and the position that they take is different from that of the Air Line Pilots Association in convention assembled. I wondered if counsel had——

Mr. Bennett: When I say I represent them, I represent them only for the purpose of making a statement for the record that they are not going to appear.

Mr. Reilly: We were not served with a copy of it, but I saw a letter in the Docket, and I assume that Mr. McBain will state that you——

Mr. Bennett: The representative of that Council will be here and will make such a statement.

Mr. Reilly: That is all I wanted to know. [2033]

Examiner Wrenn: Who is here representing Council 57?

Mr. McBain: I represent them. My name is Donald C. McBain.

Examiner Wrenn: Mr. Renda.

Mr. Renda: Has the Examiner been advised whether or not the C.I.O. will make an appearance in this case?

Examiner Wrenn: I have not. I have no information at all.

Mr. Renda: I assume, then, when their time comes to present, if they are not here, it will be in order to move that they be disregarded as a party in interest.

Examiner Wrenn: It will be perfectly in order to move that at that time, yes.

Off the record.

(Discussion off the record.)

Examiner Wrenn: All right, gentlemen.

In accordance with the order of procedure announced several days ago, the Air Line Pilots Association may proceed with their case at this time.

Mr. Bennett.

Mr. Bennett: I have prepared an opening statement that I would like to read into the record, if I may.

Examiner Wrenn: All right. Proceed.

Mr. Bennett: The agreement of March 6, 1947, whereby Western Air Lines had sold its Denver-Los Angeles Route 68, and certain physical properties to United Air Lines, was filed before this Board for approval on March 7, 1947. This agreement having made no provision for the protection of the employment and seniority rights of the air line pilot [2034] personnel flying upon said route, the A.L.P.A., as the duly authorized representative of the air line pilots of both Western and United, filed its petition to intervene in the cause, which petition was allowed.

Thereafter, on or about May 20, 1947, a hearing was conducted upon the issues involved and Mr. Terrell C. Drinkwater, President of the Western Air Lines, and the principal witness of that petitioner, testified that no pilot-employee problem existed in the contemplated transfer of the Denver-Los Angeles Route 68 and certain physical properties since Western would certainly need all flight

crews then in its employ and very probably would require additional pilots subsequent to the transfer of said route.

For your better understanding of this testimony, Mr. Examiner, I would like to read the testimony of Mr. Drinkwater at that hearing. It may be found at pages 106 to 110 of Volume I of the transcript of the hearing.

Examiner Wrenn: I have that here before me. That is through 110.

Mr. Bennett: Yes, that is right.

I have taken that portion of the transcript—there are some superfluous language in there, but I have taken from that transcript the questions and answers which bear specifically upon this question. I quote from that transcript——

Mr. Reilly: How long is this going to be, Mr. Examiner?

Examiner Wrenn: That is what I would like to know. I wonder if it is going to be a verbatim recital—— [2035]

Mr. Reilly: We can all read. It looks to me like he has five or six pages to read. If so, I will move to strike it, if he is going to start testifying.

Mr. Bennett: This is my opening statement, Mr. Examiner. I would like very much to have it go into the record so that I have continuity to my thought. I see no objection to my making the statement as I prepared it. I would like to read the excerpts as I have prepared them, into this record as part of my opening statement.

Is there any objection to that?

Examiner Wrenn: There seems to be.

Mr. Bennett: Well, I will listen to the objection.

Examiner Wrenn: Question has been raised as to how much there is there. If you are quoting verbatim the transcript, there is no need to repeat it because we have it in front of us now. I have no disposition whatever to restrain your opening statement. You may make whatever comment you want to on this, so that is perfectly all right. But the question seems to be: Why repeat pages 106 through 110 of the transcript when it is right here in front of us?

Mr. Reilly: Further than that, Mr. Examiner, the petitioner of intervention they filed sets forth their interest, and the Board recognized their interest, and granted their petition to intervene. All this testimony of Mr. Drinkwater was in that, and I don't think we should burden the record with it again.

Mr. Bennett: I think I have a right to make my opening statement. Whether I repeat what Mr. Drinkwater said or not is my prerogative in making my opening statement. I don't [2036] understand my objection except it is to save perhaps 15 cents on the record, and by making the objection the only thing counsel does is add another \$2 to the record——

Mr. Reilly: I will agree to let him proceed if it is only going to save me 15 cents, because as I read here the record costs 30 cents a page, and if he has only half a page I am willing for him to proceed.

Examiner Wrenn: Are you going to quote Mr.

Drinkwater's testimony verbatim as set down here?

Mr. Bennett: That is correct.

Examiner Wrenn: Then why read it? I have it before me.

Mr. Bennett: May I proceed?

Examiner Wrenn: You can proceed with your statement, but I was asking, is your statement going to be a verbatim reading of what Mr. Drinkwater said here?

Mr. Bennett: For a very short portion, that is correct.

Examiner Wrenn: For a very short portion, all right. Go ahead.

Mr. Bennett: May I proceed to read it?

Examiner Wrenn: Go ahead.

Mr. Bennett: I quote from the record:

"Q. When you say there that you intend to absorb substantially all of the personnel, I just wondered why the qualification.

"A. Of substantially?

"Q. Yes.

"A. Because we have too many people in most places in Western Airlines, and we are trying to reduce our overhead, and reduce the number of [2037] employees wherever we can. I did not want to say that we would absorb them all because as we get further into the situation, we may find that we have too many folks, but generally speaking we know we will need at least 14 flight crews to fly between San Francisco and Seattle to say nothing of——"

Mr. Renda: Mr. Examiner, I thought Mr. Ben-

nett represented he was going to quote that verbatim from the transcript. It reads: "We may find we have too many folks, but generally speaking we know we will need"—

I wasn't going to interpose any objection, but I am afraid I am going to interpose an objection now.

Examiner Wrenn: Is this verbatim or not?

Mr. Bennett: I was under the impression that it was verbatim. I will read from the record itself.

Examiner Wrenn: Well, the record is in front of us. Why read it?

Go ahead with your statement. What do you have to say about Mr. Drinkwater saying that? I have no objection to you commenting on that, but now you have here an argument or disagreement as to whether you are quoting the record correctly, or not. As long as we are going to get into this argument, I don't see any point in reading the record when we have it right here in front of us.

Mr. Bennett: Just a minute, sir. I will read one answer that is the most important to us. I quote from page 107 of the record.

Examiner Wrenn: Go ahead. [2038]

Mr. Bennett (Reading):

"Q. You estimate what percentage of your personnel will probably be taken over?

"A. Percentage of what personnel?

"Q. The personnel on Route 68 now.

"A. You mean Denver, Grand Junction and the pilots?

"Q. Yes.

"A. All of the flight crews, 100 per cent of

the flight crews, and I suppose, well, everybody in Grand Junction who wants a job, we are going to give them a job, and everybody in Denver who wants a job that is a competent person, is going to get a job. We have to leave some people in Denver to operate Inland Airlines, of course. But aside from the general reduction in personnel which is still going on in Western Air Lines, we would take care of all of these people."

On or about June 19, 1947, notwithstanding the assurance of Mr. Drinkwater to the contrary, and being fearful of the results to Western pilots should the sale of Route 68 be approved by the Board without making some provision for the transfer of pilots flying that route to the new owner, A.L.P.A. filed its brief in this cause asking that the approval of the sale of Route 68 and certain physical properties be conditioned upon the pilot-employees of Western normally required to fly the Denver-Los Angeles Route 68 be taken over by the purchasing company, United Air Lines, with full employment and seniority rights and integrated into the [2039] United Pilots' seniority list.

On August 25, 1947, the Board entered its findings and order, Serial E-772, approving the agreement for the sale by Western to United of the Denver-Los Angeles Route 68, together with four DC-4 airplanes. The findings and order of the Board made no provision for the disposition of the pilot personnel who were flying Route 68 for Western, and upon this subject the Board made the fol-

lowing observation—pages 23 and 24 of the order of the Board, Serial E-772.

And I would say at this point, rather than get into the argument I did before in quoting this, I would direct the Examiner's attention to the observations made by the Board in that order with respect to the request of the Air Line Pilots Association to condition the order of sale so as to require United to take into its seniority list that personnel that was flying the route for Western.

Examiner Wrenn: I personally am quite familiar with it, Mr. Bennett, and I am sure the Board is.

Mr. Bennett: The order, as you undoubtedly are aware, and as you say you know, said there was no reason why it should be done in view of Mr. Drinkwater's statement.

From the findings of the Board, above, it becomes obvious that the Board's omission from its order of a provision to protect the employment and seniority rights of the pilot personnel flying Route 68 was based entirely upon the recitations of President Drinkwater of Western Air Lines that all of the pilot-employees would continue to be employed by Western Air Lines, retain their full seniority and other rights, notwithstanding the transfer of the route and certain [2040] physical properties.

Immediately, subsequent to the issuances of the order of the Board on August 25, 1947, approving the sale and transfer of the Denver-Los Angeles Route 68 from Western to United, only nine days later, Western issued its inter-office communication

dated September 4, 1947, whereby twenty-odd pilot-employees were removed from Western's pay roll and there followed almost a complete reshuffling of Western's pilots to different routes on the system and a wholesale demotion and reduction of flying time and night flying with a resultant reduction in pay of the pilots of Western Air Lines.

In view of the conditions above recited, which the sale of Route 68 brought about among the pilot personnel of Western, the A.L.P.A. 19 days thereafter, on September 23, 1947, filed its petition for rehearing and reconsideration of the Board's decision and again requested that the Board's approval of the sale of the Denver-Los Angeles Route 68 from Western to United be conditioned so as to require United to take into its pilot seniority list all the Western pilot personnel that were normally required to fly Route 68 as operated by Western.

In response to the contention of the A.L.P.A. that the representations made at the original hearing of this cause by Mr. Drinkwater, president of Western Air Lines, had been erroneous, misleading and without foundation, and that the sale and transfer of Route 68 had, in fact, worked a tremendous hardship and a very real material loss upon the pilot personnel of Western and that the Board had erred in accepting the erroneous and misleading representations of Mr. [2041] Drinkwater in not conditioning the sale of Route 68 so as to require United to take into its seniority list the pilot personnel normally required to fly Route 68, this Board, on August 25, 1948, entered its order reopening this

cause to determine, as I believe we all understand:

(1) Whether any employees of Western Air Lines have been adversely affected as a consequence of the transfer of Route 68 and certain physical properties by Western Air Lines to United Air Lines, and

(2) What conditions, if any, for the protection of the employees of Western Air Lines who may have been adversely affected should be attached to the——

Mr. Renda: Mr. Examiner, I hate to interrupt, but——

Mr. Bennett: Oh, I don't mind. You may interrupt.

Mr. Renda: I think we are pretty far afield in this opening statement. We are repeating everything that the Board knows, and I am sure the Examiner knows, and that we all know. And I don't think it is going to facilitate this proceeding in any way, and if there is a lot more of it to come I think we ought to put a stop to it now.

Examiner Wrenn: Go ahead, Mr. Bennett.

Mr. Bennett: Thank you.

So far as the Air Line Pilots Association is concerned, these are the chronological happenings in this case to the date of the Prehearing Conference conducted on October 11, 1948, subsequent to the reopening of the matter. At this Prehearing Conference it was determined that the Air Line Pilots Association had the burden of establishing which pilot-employees of Western Air Lines, if any, had been adversely affected as a consequence of the sale

of Route 68. The [2042] Association accepted this challenge of showing the adverse effect which the sale of Route 68 has had upon the Western pilots.

The evidence we will produce will show that in his testimony before the Civil Aeronautics Board on May 20, 1947, Mr. Terrell C. Drinkwater indicated that a minimum of 14 flight crews, or 28 pilots, were on that date operating Route 68. The evidence will further show that a minimum of seven pilots are required to keep a DC-4 airplane in normal operation by an air carrier, and that the 14 flight crews, or 28 pilots, mentioned by Terrell C. Drinkwater was the complement of pilots on Route 68.

Examiner Wrenn: What did you say?

Mr. Bennett: Was the complement of pilots on Route 68 at that time.

Mr. Reilly: At what time?

Mr. Bennett: May 20, 1947.

Examiner Wrenn: All right. Go ahead.

Mr. Bennett: That the 14 flight crews were operating the four DC-4 airplanes on Route 68.

The evidence will further show that for a long period of time no airplanes were acquired by Western Air Lines, or put into operation by that company, to replace the four DC-4's transferred from Western to United with Route 68. It therefore becomes only a matter of mathematics to determine that the sale of Route 68 and the four airplanes reduced the number of pilots which Western Air Lines would otherwise have required by not less than 28.

In addition to this mathematical certainty of the [2043] adverse effect which the sale of Route 68 had upon the Western pilots, the evidence will demonstrate:

(1) That Western Air Lines' pilot personnel flew less mileage after the sale of Route 68 than they flew before the sale, with a consequent loss of earnings;

(2) That Western Air Lines' pilot personnel flew fewer and smaller aircraft after the sale of Route 68 than they flew before the sale, with a consequent loss of earnings;

(3) That Western Air Lines' pilot personnel had less night flying after the sale of Route 68 than they had before the sale, with a consequent loss of earnings;

(4) That twenty-odd of Western's more junior co-pilots were removed from Western's pay roll following the sale of Route 68;

(5) That the extension of Route 63 did not initially nor has it since equalled or replaced Route 68;

(6) That senior pilots who were flying Route 68 at the time of the sale were required to exercise their seniority and displace pilots junior to them on other Western routes, and that these senior pilots were then required to check out on these new routes with a consequent loss of earnings;

(7) That senior pilot captains who held permanent bids on Route 68, and who had been flying that route from its inception, were required, by reason of the sale, to exercise their seniority in dis-

placing captains more junior to themselves on other Western routes, and the junior captains so displaced were oftentimes demoted to reserve pilots or even co-pilots, with a consequent loss of seniority and greatly reduced earnings; [2044]

(8) The demotion of these junior captains to reserve pilots and co-pilots, in turn, necessitated demotion and loss of earnings throughout the entire pilot-personnel of Western Air Lines and culminated in the severance of 20-odd of the pilot-employees of the carrier.

(9) The evidence will show that not the least of the adverse effects suffered by the Western pilot-personnel in consequence of the sale of Route 68 was their forfeiture of seniority benefits, such as promotion rights, pilots' status, seniority number, all brought about by the drastic reduction in pilot personnel. Indeed the evidence will show that whereas prior to the sale some co-pilots were steadily employed; after the sale they were furloughed, called back to work and again furloughed. Pilot captains with permanent bid runs were reduced to reserve captains flying lighter equipment, and reserve captains, in turn, were reduced to flying co-pilot. Because of the sale of Route 68 the junior pilots of Western almost without exception are today further away from flying as captains than they were on the date of the sale, notwithstanding the passage of time and notwithstanding the expansion which has taken place by reason of the extension of Western's Route 63.

(10) The evidence will further show that the

growth and development of the present certificated scheduled air carriers is the result of innumerable consolidations, mergers and purchases, and for a long period of time and in every purchase, merger or consolidation of two or more air carriers the pilot-personnel involved have gone with the route and have been taken into the purchasing or consolidated companies without [2045] prejudice or loss to their employment or seniority rights.

Mr. Reilly: What is that word—"innumerable"?

Mr. Bennett: Innumerable.

Mr. Reilly: You can't count from one to three.

Mr. Bennett: What is that?

Examiner Wrenn: Go ahead.

Mr. Bennett: Well, I think I have a right to understand what he says. I cannot understand what he said.

Mr. Reilly: I said did you say "innumerable"?

Mr. Bennett: Yes, I did.

Examiner Wrenn: Proceed.

Mr. Bennett: In approving the sale of Route 68 without making any provision for the pilot personnel flying said route, the C.A.B. failed to recognize or appreciate that a transfer of route mileage from one air carrier to another necessarily prejudices the rights of pilot-personnel flying that route by eliminating pilot positions and causing a chaotic situation among those pilots remaining with the carrier. This is true because the contractual relationships between airlines and its pilot-personnel always provides for seniority. This seniority in turn gives to these pilot employees certain rights with respect to

given mileage on the route. Again when mileage of one air carrier is transferred, as in this case, without providing for a transfer of pilots flying the same, the rights and privileges of other pilot-employees of the carrier are disturbed and abridged because their replacement is permitted by pilots who have greater seniority, and this results in the elimination of pilot positions in that the junior pilots on the carrier's seniority list are eliminated. This error [2046] committed by the Board in permitting the sale and transfer of Route 68 without protection——

Examiner Wrenn: Don't you think that oral argument had better come after you have finished your case?

Mr. Bennett: Do you object to this?

Examiner Wrenn: I don't object to it, but it just sounds to me like oral argument about what was wrong with the Board's decision. It is a matter that you have a right to put in brief, and call to the attention of the Board, but as a matter of opening statement it is a little far afield to me.

Mr. Bennett: Would you like to have it stricken?

Examiner Wrenn: No, but it seems to me it is an oral argument. Is it necessary to your opening statement?

Mr. Bennett: No, nothing of this is necessary. We could have proceeded without any opening statement if we cared to present the case in that fashion. But I would like to finish the statement, if I may.

Examiner Wrenn: Go ahead. I will hear you a

little further on it. But not if it continues in the realm of argument.

I would point out to you here the question as to what the evidence will show is perfectly proper in your opening statement, but this sounds like argument.

Mr. Bennett: I think it is an opening statement, not argument.

Examiner Wrenn: Go ahead, but it sounds very much like argument to me.

Mr. Bennett: The obvious adverse effect upon the [2047] pilot-personnel which the sale of Route 68—Western's—would bring about, caused A.L.P.A. to take the position prior to the time that the C.A.B. approved the sale, that the Western pilots normally required to fly Route 68 must follow the sale of said route into the purchasing company, United Air Lines, and there be integrated into the seniority list of that carrier without loss of seniority. The resulting adverse effect on the pilot-personnel which our evidence will demonstrate took place by reason of the sale of Western's Route 68 makes the Association even more determined not to retreat from this original position, nor will it ever. It is the manner in which the pilot-personnel problem has been resolved in all air line consolidations, sales, and mergers in the past; it is a simple and just solution of the pilot-personnel problems in all like cases, and it is the solution in this case.

I would like to call Mr. Hoagland as our first witness.

Examiner Wrenn: All right.

Whereupon,

J. I. HOAGLAND

was called as a witness on behalf of the Air Line Pilots Association, and, having been first duly sworn, was examined and testified as follows:

Examiner Wrenn: What are your initials, please?

The Witness: J. I. Hoagland.

Direct Examination

By Mr. Bennett:

Q. Will you give the Examiner your address?
Where do you live? [2048]

A. 3326 South, 1940 East, Salt Lake City.

Q. You are a member of the Air Line Pilots Association?

A. I am.

Q. And you are a commercial air line pilot?

A. I am.

Q. By whom are you employed?

A. Western Air Lines.

Q. How long have you been in their employ?

A. Since about July, 1942.

Q. In September of 1947 what route were you flying?

A. I was flying Routes 19 and 52, between Salt Lake City, Utah, and Lethbridge, Canada, based at Salt Lake City.

Q. How long had you been flying those routes?

A. Approximately two years.

Q. Was that during all your time as a captain?

(Testimony of J. I. Hoagland.)

A. No. I had flown previous to that in Canada and Alaska.

Q. Well, during your domestic—that was during the war, was it not? A. Yes.

Q. During your domestic flying in ordinary operations had you always flown these two routes?

A. Yes.

Q. In what capacity were you flying?

A. As reserve captain.

Q. Will you explain to the Examiner what you mean by a reserve captain?

A. Well, a reserve captain is a captain who flies [2049] time left at a base after the big captains have flown their allotted time.

Q. And this time that the reserve captain flies, is that completely captain time?

A. Well, that would depend on the seniority. If he had enough seniority to fill up his full 85 hours, if there was enough time available for him to get in his full 85 hours, it would be full time.

Q. But all the time that a reserve captain flies is captain time? A. That is correct.

Q. And you get paid captain's pay?

A. Yes.

Q. Is there always surplus captain flying time for reserve pilots to fly?

A. It is the policy of our company that 10 per cent of the stipulated time with each base is not bid; therefore, left available to reserve captains.

Q. Now, I believe you stated you flew as a reserve captain for approximately two years prior to

(Testimony of J. I. Hoagland.)

September of 1947; is that right? A. Yes.

Q. And that was continuously? A. No.

Q. Now, do you know when the sale of Route 68, or the transfer of Route 68, took place?

A. It was in August or September, 1947.

Q. And will you tell us if your employment was affected in any regard at that time? [2050]

A. No, not immediately. But within a period of a short time I was affected.

Examiner Wrenn: When you say "short time," would you give us a better approximation, Mr. Hoagland?

The Witness: I would say 30 to 60 days.

Q. (By Mr. Bennett): What occurred?

A. I lost the flying time that I had been getting as a reserve captain.

Q. What brought about the loss?

A. It was brought about by the fact that a senior pilot to myself moved in to my base, and I was displaced from this time I was getting.

Q. What happened to you? You were reduced to what? Were you reduced to co-pilot?

A. That is correct.

Q. What was your average monthly earnings during this two-year period immediately preceding the transfer of Route 68?

A. Would you repeat the question?

Mr. Bennett: Would you read the question, Mr. Reporter?

(The question was read.)

The Witness: Approximately \$750 a month.

(Testimony of J. I. Hoagland.)

Q. (By Mr. Bennett): Now, after you were reduced to co-pilot, what was your average monthly earnings?

A. In 1948 the co-pilot scale was \$480 a month for a maximum—that was the maximum pay for co-pilots who had—that was the top bracket for the top co-pilot, so to speak. [2051]

Q. Has it changed since that time?

A. Yes, it has changed. In 1949 we obtained a new contract that placed the pay at \$525 per month.

Examiner Wrenn: Would you read the previous question, please?

(The record was read.)

Examiner Wrenn: I don't think you quite answered that question.

The Witness: It would be \$480 a month at that time.

Examiner Wrenn: I meant to get your particular facts. Go ahead.

Q. (By Mr. Bennett): Co-pilots receive a flat salary, do they not? A. Yes.

Q. That flat salary, however, varies with the length of service that the co-pilot has been with the company? A. Yes.

Q. And the top co-pilot's pay in 1948 was how much? A. \$480 a month.

Q. Is that the sum you received as a co-pilot after your reduction? A. Yes.

Examiner Wrenn: Where were you on the seniority list as co-pilot? Did you fly regularly?

The Witness: Yes.

(Testimony of J. I. Hoagland.)

Mr. Bennett: During what period?

Examiner Wrenn: After he was reduced back.

The Witness: Yes. I flew—well, I fly all of the time. [2052]

Q. (By Mr. Bennett): You are still flying as co-pilot, is that true? A. Yes.

Q. Do you know who it was—strike that.

Do you know where the pilot came from who moved into your base?

A. He came from the Los Angeles base.

Q. Do you know what route he had been flying previously?

A. Well, he would have been a reserve captain at that base, and would have had choice of flying the routes from Los Angeles to Salt Lake, or Los Angeles to San Francisco.

Q. Do you know why he moved out of that base?

Mr. Reilly: Mr. Examiner, that was not responsive to the question. The question asked where he flew, and he said he was based at Los Angeles and had a choice of flying two routes. I think the answer should be what route he flew, not the choice of routes.

We are here involving Route 68. If he just answers whether or not the man did fly Route 68, that would be sufficient.

Q. (By Mr. Bennett): Do you know whether he did or did not fly Route 68?

A. No, I do not know.

Examiner Wrenn: Now, were you going to with-

(Testimony of J. I. Hoagland.)

draw the next question? There was an objection to it.

Mr. Bennett: It may be withdrawn.

Examiner Wrenn: All right.

Mr. Bennett: You may cross-examine. [2053]

Examiner Wrenn: Does the Brotherhood have any questions?

Mr. Crawford: None.

Examiner Wrenn: There is no representative present for the U.A.W., is there?

(No response.)

Examiner Wrenn: All right, Mr. Renda, you may examine.

Cross-Examination

By Mr. Renda:

Q. How long have you been in the employ of Western Air Lines? A. Since July, 1942.

Q. Have you flown continuously since July, 1942?

A. Yes. I will have to make a statement on that. My employment started in July, 1942, and there was schooling to go through, necessary for me to qualify on the equipment, and it was at a slightly later date that I started flying.

Q. When did you start flying on Western's domestic operations? The date, please.

A. I would believe the date of release as a co-pilot on Western Air Lines was in November, 1942.

Q. Was your flying continuous on Routes 19 and 52 since November, 1942?

(Testimony of J. I. Hoagland.)

Mr. Bennett: In the same capacity I think it would be—well, I withdraw that.

Examiner Wrenn: Do you want the question again?

The Witness: Yes, please.

Examiner Wrenn: Read the question, Mr. Reporter.

(The question was read.) [2054]

The Witness: It was with the exception of the time I stated I was in Canada and Alaska flying during the war.

Q. (By Mr. Renda): When did you return from Western's Alaskan operation and resume flying on 19 and 52 within the United States?

A. I believe it was in August, 1945.

Q. Have you been furloughed at any time since August, 1945? A. No.

Q. What was your status as of August, 1945? By that I mean co-pilot or reserve captain, or otherwise? A. Reserve captain.

Q. How did you acquire the status of reserve captain?

A. I was promoted or released as a reserve captain after—when there was a need for, or the availability of time for me to fly.

Q. What are the advantages that exist by reason of being a reserve captain as compared to a co-pilot?

A. Well, it means that you get more money—I suppose that is the biggest interest.

(Testimony of J. I. Hoagland.)

Q. What are some of the disadvantages, Mr. Hoagland?

A. Well, I don't know that I could state any disadvantages.

Q. Isn't it a fact that your being a reserve captain is a voluntary choice on your part?

A. Well, I don't believe so. Because if I—a pilot has to show within a reasonable time that he is captain material or he can be dismissed from the company. So I wouldn't say it was entirely [2055] voluntary.

Q. As a reserve captain, you are not assigned to any particular route, are you?

A. You bid as a reserve captain on a bid basis, and you are not—no, you are not assigned to any particular route.

Q. You don't have any particular route to fly?

A. No.

Q. And isn't it a fact that one of the big disadvantages of being a reserve captain is that you are subject to being bumped pursuant to the seniority regulations of your company?

A. Yes, but that is also the case with any pilot, whether reserve pilot, co-pilot, or captain.

Q. The fact that you were bumped after the sale of Route 68, was there anything unusual about that procedure?

A. Well, the procedure, according to our normal procedure, I guess, is when there is a reduction.

Q. Isn't it a fact that the same thing would

(Testimony of J. I. Hoagland.)

happen if there were a cut-back of schedules which would reduce the flying time?

A. That is correct.

Q. Now, you indicated that after the sale of Route 68 your change in status from reserve captain to co-pilot was brought about by a pilot formerly based at Los Angeles exercising his seniority pursuant to the provisions of the A.L.P.A. contract with Western?

A. That is correct.

Q. What was the name of that pilot?

A. Bill Pelton. [2056]

Q. And at what time did he report at Salt Lake City base?

A. It was approximately June.

Q. Of what year?

A. 1947.

Q. June, 1947. At that time you were flying as a reserve captain on 19 and 52?

A. That is correct.

Q. You continued to fly as reserve captain on 19 and 52 until what date?

A. Until about September, 1948.

Q. September, 1948?

A. Yes.

Q. And during the period of time that you were flying as reserve captain your earnings approximated \$9,000 a year; is that correct?

A. Well, I would have to add it up. It would be approximately \$750 a month.

Mr. Bennett: May I have the question and answer previous to that?

Examiner Wrenn: All right. Read it, Mr. Reporter.

(The question and answer were read.)

(Testimony of J. I. Hoagland.)

Q. (By Mr. Renda): And it was not until after September, 1948, that there was a change in your status from reserve captain to co-pilot?

A. That is correct.

Mr. Renda: No further questions.

Examiner Wrenn: Mr. Reilly. [2057]

Mr. Reilly: No questions.

Examiner Wrenn: Mr. Kennedy, are you going to question for Public Counsel, or is Mr. Bechtold?

Mr. Kennedy: Mr. Bechtold is not here, Mr. Examiner, so I will.

Examiner Wrenn: All right, proceed.

Q. (By Mr. Kennedy): Is it correct that you were not reduced from reserve captain to co-pilot until a year after the sale of Route 68?

A. That is correct.

Q. Mr. Hoagland, could you give us a little bit fuller explanation of the distinction between a reserve captain and a co-pilot? I am not altogether clear on that. What is the difference in terms of what they do?

A. A reserve captain for all purposes you could call a captain. A co-pilot is the junior member.

Q. Does a reserve captain sometimes fly as a co-pilot? A. That is correct.

Q. But when flying as a co-pilot he gets a captain's pay?

A. No, he gets the co-pilot's pay.

Q. And his pay is determined by the capacity in which he is flying at given times?

A. That is correct.

(Testimony of J. I. Hoagland.)

Q. A reserve captain might have the status of a reserve captain, but on a flight he might be a co-pilot, on a given flight?

A. That is correct. [2058]

Mr. Kennedy: That is all.

Examiner Wrenn: How does a co-pilot become a captain on Western?

The Witness: He has to convince the company by——

Examiner Wrenn: I mean by that, does he become a reserve captain first, or is there a procedure where he automatically moves over and becomes a regular captain?

The Witness: Well, a situation could be arranged, I guess, that he could go direct from co-pilot to captain, but as a rule it doesn't happen that way. He becomes a reserve captain and then a captain.

Examiner Wrenn: A question was raised in my mind as a result of Mr. Kennedy's question, and all I was concerned about is the normal procedure of a co-pilot moving into a captain's status, and you say that is normally through reserve captain.

The Witness: Yes.

Examiner Wrenn: Any further questions?

Mr. Bennett: Yes, if I may.

Examiner Wrenn: All right, Mr. Bennett.

Redirect Examination

By Mr. Bennett:

Q. Was your employment in any wise affected, other than what you have indicated, within a very short period after the September, 1947——

(Testimony of J. I. Hoagland.)

Mr. Renda: I object to that question on the ground——

Mr. Reilly: I object to that in both form and substance.

Mr. Bennett: I think I have a right to know whether his [2059] employment was affected——

Mr. Renda: He should have asked that on direct.

Mr. Reilly: Not only that, but there is a proper way to ask the question. You don't have to lead him all over the entire——

Mr. Bennett: I think I have a right——

Mr. Reilly: It can be asked in a short sentence.

Examiner Wrenn: I think you were leading the witness there. We want all the information we can get from this witness, but I think you were leading.

Mr. Bennett: I will withdraw the question.

Q. (By Mr. Bennett): What was your exact status in September, 1947?

Mr. Renda: I think he has answered that question on direct, that he was in the status of reserve captain.

Q. (By Mr. Bennett): Is that correct?

A. September, 1947—at that time I believe I still had a temporary run as a captain. There was a short period in that one summer there that was additional flying time added, and I bid and was awarded a temporary run on DC-3 equipment.

Mr. Renda: I move that the answer be stricken as not responsive to the question.

Mr. Bennett: I submit it is responsive. If I may go on and ask another question, it will clear up.

Examiner Wrenn: All right, I will hear the

(Testimony of J. I. Hoagland.)

other question and then listen to the motion at that time. [2060]

Q. (By Mr. Bennett): Is that the same as a reserve pilot?

A. No, that would be the same as a captain. It was a captain, only it was temporary time. When they put out the temporary time it is just additional flying time, but they don't know how long it will be in effect, so it is just bid as temporary time.

Q. How many hours a month were you getting at that time, in that temporary bid?

A. Full time.

Q. Did you get the same amount of time subsequently?

A. No. After, oh, September, when that temporary time was abolished at my base I didn't get but approximately 60 hours a month of captain time.

Q. That 60 hours a month, I take it, was flown in what capacity?

A. As reserve captain.

Q. How long did that situation continue?

A. Well, I was in that capacity as reserve captain flying approximately that many hours until September of 1948.

Q. And September, 1948, was when you were reduced to co-pilot; is that correct?

A. That is correct.

Q. Was there any difference in your monthly pay, between—strike that, please.

Was there any difference between your average monthly earnings after September, 1947, and previous to that time?

(Testimony of J. I. Hoagland.)

A. Prior to September, 1947, I was getting very close to full month's quota of flying, as I recall, and after that [2061] I dropped to approximately 60 hours a month, which would be less from a value of dollars and cents standpoint.

Q. Can you tell the Examiner how much less?

A. Oh, it would be approximately \$150 a month less.

Q. And that continued until you were reduced to co-pilot? A. Yes.

Mr. Bennett: That is all.

Mr. Reilly: I have a couple of questions, Mr. Examiner.

Examiner Wrenn: All right, Mr. Reilly.

Recross-Examination

By Mr. Reilly:

Q. When were you first apprised that you were going to testify in this case, Mr. Hoagland?

A. Oh——

Q. Let me help you a little bit. You know the route was transferred, and the order of the Board was issued in September of 1947?

A. That is correct.

Q. How soon after that were you notified, or did you volunteer, that you would testify in this proceeding?

A. I was asked—I wouldn't know the exact date, but it was approximately six months ago.

Q. Did you review the dates of these various assignments you had in pilot personnel of Western Air Lines after that time? A. Yes.

(Testimony of J. I. Hoagland.)

Q. Why didn't you give us the exact dates of these [2062] various assignments today, then? What was this temporary assignment you were talking about? How long did it last as a captain?

A. It would be——

Q. Give me the dates?

A. Approximately two months.

Q. Give me the dates, now.

A. Well, it would have been from May, approximately the first of May, until the latter part of August or September.

Examiner Wrenn: What year?

The Witness: That was 1947.

Q. (By Mr. Reilly): What happened when this fellow came over in June to Salt Lake City?

A. My status wasn't affected at that time because there was available time for me there, even though he was senior to me.

Q. Is it your testimony that you were flying a full 85 hours a month?

A. I don't recall any interruptions in that time prior to then.

Q. Right on the nose? A. Very close.

Q. Now, as reserve captain you knew that—you were aware at all times that you were subject to bumping and reduction for any reason that mileage would be reduced on Western Air Lines, Routes 19, 52, 63, or anywhere else; is that right? [2063]

A. That is right.

Q. And you were somewhere between a hiatus

(Testimony of J. I. Hoagland.)

of co-pilot and reserve captain at all times?

A. That is right.

Q. And you were not affected as a reserve captain until 1948? A. That is right.

Q. And the only difference in that was your temporary run as a captain some time between May and August of 1947; is that correct?

A. That is about the sum and substance of it, I guess.

Q. You had this temporary run as a captain before the Board approved the transfer of Route 68; is that correct? A. Yes.

Q. This man who was transferred over to Salt Lake City, Captain Pelton, he was transferred two and a half months before the Route 68 transfer was approved; isn't that correct? Wasn't it in June? A. That is right.

Mr. Reilly: I have no other questions.

Examiner Wrenn: Mr. Renda.

Q. (By Mr. Renda): Your status of reserve captain never changed, did it, during that period of 1947? A. No.

Q. That was more or less your permanent status? A. Yes.

Q. And when you were assigned as a temporary captain [2064] you fully recognized that that was a temporary assignment? A. That is correct.

Q. Where were you flying in August, 1947?

A. From Salt Lake City to Lethbridge, Canada.

Q. Are you familiar with the fact that in the

(Testimony of J. I. Hoagland.)

summer months of 1947 Western operated a schedule between Salt Lake City and West Yellowstone?

A. Yes.

Q. Do you know on what date that schedule change was effected—that that schedule was removed?

A. It would have been approximately the last of September, or first of October.

Q. Isn't it a fact that the schedule was changed on September 15, 1947?

A. Well, if you have the dates there, I guess you hit it closer than I did. I said approximately the latter part of September or first of October.

Q. You indicated you flew maximum time. Maximum time is 85 hours? A. Correct.

Q. Isn't it a fact that if you fly maximum hours, that you are only scheduled to 80 hours?

A. No, that isn't correct.

Examiner Wrenn: Are you talking about Mr. Hoagland, himself.

Mr. Renda: Yes.

The Witness: I can fly up to not over 85 hours, but I can fly 84 hours and 59 minutes. [2065]

Q. (By Mr. Renda): How many hours did you fly in May, 1947?

A. I don't have that information.

Q. How many did you fly in June, 1947?

A. I don't have that information, except to state, as I did before, that I was flying approximately full time.

Q. How many hours did you fly in July, 1947?

(Testimony of J. I. Hoagland.)

A. The same answer.

Q. How many hours did you fly in August, '47?

A. The same answer.

Q. How many hours did you fly in September, 1947?

A. The same answer.

Q. Were there any others that were transferred to Salt Lake City base at the same time as Mr. Pelton in June, 1947? Any other pilots?

A. Yes.

Q. Do you recall their names?

A. Mr. Hall.

Q. Any others that you remember?

A. I don't recall any others.

Q. And Mr. Pelton and Mr. Hall were transferred in June, 1947, and they were assigned to fly on Route 19 and Route 52 at that time?

A. That is correct.

Q. No one lost any flying time in June, 1947, did they? On Route 19-52?

A. No.

Q. To your knowledge.

A. To my knowledge.

Q. You didn't lose any in June or July, did you? [2066]

A. No.

Mr. Renda: That is all.

Examiner Wrenn: Mr. Kennedy.

Q. (By Mr. Kennedy): Do you recall what your average monthly compensation was in the months May to August, 1947?

A. Approximately \$750 a month.

Q. And what was it in the period between August, 1947, and September, 1948?

(Testimony of J. I. Hoagland.)

A. As I stated before, it would be approximately \$150 less.

Q. And after September, 1948, it was \$480 a month?

A. Yes, until 1949 when we received our raise.

Q. What was the date of the raise, do you know?

A. It was the first of January, 1949, as I recall.

Mr. Kennedy: That is all, Mr. Examiner.

Mr. Reilly: I have one other question, if I may.

Examiner Wrenn: All right, Mr. Reilly.

Q. (By Mr. Reilly): The reason for the \$150 difference was the difference between the captain on the temporary run and the reserve captain status; is that correct?

A. No; because I was not getting as much time.

Q. The reason for that difference was that you had bid in as a temporary captain on the DC-3; is that right?

A. While I was flying this temporary run. The time previous to that before these other fellows came in to the base I was getting very close to full, as I recall, and after this other fellow came in his seniority affected mine, and I [2067] didn't get as much.

Q. You were getting full time prior to May, 1947?

A. Very close.

Q. In other words, you didn't get much additional time as captain on this temporary run; is that right?

A. Yes.

(Testimony of J. I. Hoagland.)

Mr. Kennedy: May I ask one more question, Mr. Examiner?

Examiner Wrenn: All right.

Q. (By Mr. Kennedy): Was your rate of pay as temporary captain the same per hour as reserve captain?

A. It would be very much the same.

Mr. Kennedy: Thank you. That is all.

Examiner Wrenn. Thank you, Mr. Hoagland. You are excused.

Mr. Bennett: Mr. Horn.

Whereupon,

C. M. HORN

was called as a witness on behalf of Air Line Pilots Association, and, having been first duly sworn, was examined and testified as follows:

Examiner Wrenn: Will you give your initials and address to the reporter?

The Witness: C. M. Horn, 3627 Jackson, Denver, Colo.

Direct Examination

By Mr. Bennett:

Q. You are a commercial air line pilot?

A. Yes.

Q. Employed by Western Air Lines? [2068]

A. Yes.

Q. How long have you been employed by Western Air Lines?

(Testimony of C. M. Horn.)

A. Since March 23, 1943, and my seniority date is April 14, 1943.

Q. By whom were you employed previous to your employment with Western Air Lines?

A. I was hired by Inland Air Lines.

Q. On what date?

A. On the date I just gave you.

Q. You mean both dates?

A. March 23, 1943.

Q. And you have—what did you say your seniority date was with Western?

A. April 14, 1943, which was also my Inland seniority date.

Q. Will you explain that to the Examiner?

A. I hired out as an Inland pilot. Late in 1944 Western Air Lines acquired Inland Air Lines and my seniority was then transferred to a combined list which included all Inland pilots and all Western pilots, and became the seniority list under which we now operate.

Examiner Wrenn: You retained your same seniority date in Western as you had when you entered Inland?

The Witness: That is correct. Full credit for my work with Inland was given when Western bought in.

Examiner Wrenn: All right, Mr. Bennett.

Mr. Bennett: I think there was an error in his statement, and, if so, would you read back what his seniority [2069] dates were, and when he went to work for Western?

(Testimony of C. M. Horn.)

The Witness: If I may, I can explain that. I was hired March 23 by Inland——

Q. (By Mr. Bennett): What year?

A. 1943. And I was required to qualify on the routes and the equipment as co-pilot, and then my seniority date is the one upon which I flew the first trip as a member of an Inland crew. So that accounts for the time period there of three weeks when I was qualifying.

Q. How long were you working for Inland before you went to work for Western?

A. It is all the same thing. I mean, my Inland employment was the same as my Western employment, but there was a period of slightly over a year there before Western acquired Inland.

Q. And you say this master seniority list that was made up of the Inland and Western pilots, is that the seniority list that is now in effect?

A. That is correct.

Q. What route were you flying for—what route were you flying in September, 1947?

A. I was flying Routes 28 and 35 out of Denver.

Q. In what capacity?

A. As reserve captain.

Q. Where does that route run from?

A. Route 28 is Denver, Great Falls, Montana, and 35 is Denver, Minneapolis, Minn.

Q. You say you were flying those routes as a reserve [2070] captain at that time?

A. That is correct.

Q. How long had you been so flying?

(Testimony of C. M. Horn.)

A. I had built up about two years as a reserve captain with Inland and Western.

Q. Immediately? I mean, had you been flying steadily for those years as a reserve captain?

A. If I may say, I would rather not get into that because I was flying both captain and co-pilot, and it gets much more involved than Mr. Hoagland's problem.

Examiner Wrenn: Well, I don't think we need get that far back in it.

Mr. Renda: We will give you a gold star when we get back.

The Witness: I am sorry the situation was so, because I would rather have had full captain time, but I wasn't getting full time.

Q. (By Mr. Bennett): Do you know how your time was divided? Were you getting more captain time than co-pilot time?

A. Yes. During this two-year period I was flying—I was listed as a reserve captain and flying predominantly captain time.

Q. What were your average monthly earnings during that period?

A. Well, I haven't averaged them, and, well, some months it was very good, I would get a good month as captain, and then the next month I would fill in with co-pilot time. But—well, if I can get around it, I would rather not set [2071] an average because I might be far enough off to make it look fishy.

(Testimony of C. M. Horn.)

Q. You don't know what you were earning during that period?

A. I know what I was earning, but I would have to check to be explicit on it.

Q. Well, can you give us your best——

A. Well, say, conservatively \$600 a month.

Q. Do you think it would certainly equal that much? A. As I recall, it would.

Q. Do you know when the sale of Route 68 took place?

A. Yes. It happened at the time I was in Los Angeles and was forced to ride another air line to Denver, so the date is quite fixed in my mind. It was September 15, 1947.

Q. Now, was your position as a reserve captain in any wise affected on that date?

A. Not on that specific date, but a short time thereafter.

Q. How long thereafter?

A. Well, within 30 days.

Q. What happened to you?

A. We had two pilots who under the contract were allowed to bid into Denver—and when I say under the contract, they were senior men who had been flying Route 68, and they bid back into the Denver base which precluded any chance I had of obtaining reserve flying from the time they were qualified on the routes I had been flying on.

Q. And what happened to you then? [2072]

A. Well, I lost my classification as a reserve pilot then, and I became a co-pilot.

(Testimony of C. M. Horn.)

Q. And what were your earnings as a co-pilot?

A. At the time I was immediately bumped back it became \$380, which subsequently became \$480 due to a retroactive contract we negotiated. And I am quite aware of what took place there as I have been on the negotiating committee for several years, and was in on that.

Q. Co-pilots are paid a flat salary?

A. That is correct.

Q. And have you been flying as co-pilot ever since? A. That is correct.

Q. Have you translated the difference in pay between that which you might have earned had you remained as a reserve captain, and your earnings as a co-pilot for the period from that date until presently?

A. Well, I haven't very specifically, but had I been able to continue as reserve there would have been about \$150 a month difference.

Q. From what date?

A. Well, from any date you choose. It took place in September of 1947.

Q. And has continued until to date?

A. Yes, that is right. It would be roughly a total of around \$4,000, then, if I figure it correctly.

Q. Have you always flown these two routes?

A. That is right.

Q. You have always been on these two routes in domestic operations? [2073]

A. Yes. There was a time on Inland when we had our contract with the Army I was flying cargo, but that was domestic also, and in my service with Inland and Western I have flown either co-pilot

(Testimony of C. M. Horn.)

or captain on these two routes.

Mr. Bennett: You may cross-examine.

Examiner Wrenn: Does the Brotherhood have any questions of this witness?

Mr. Crawford: No questions.

Examiner Wrenn: Mr. Renda, you may examine.

Cross-Examination

By Mr. Renda:

Q. On what date were you made a reserve captain?

A. It was the date following the day I got my rating, my air transport rating, which I can give you here in a minute.

Q. Please.

A. My rating was issued January 7, 1946, and right after that I was elevated to reserve captain's rating with Western.

Q. Prior to then you were a co-pilot?

A. Yes, sir.

Q. And you were employed continuously during the time you were a co-pilot?

A. Yes, sir.

Q. Have you ever been furloughed, or did you ever lose any time for reasons other than your own?

A. I have never lost any flying time as co-pilot or captain, but I have lost a lot of captain flying. I was flying one or the other for the whole period. I have never [2074] been furloughed.

Q. You are only qualified to fly DC-3 aircraft; is that correct?

A. That is correct.

Q. So that at no time have you been interested

(Testimony of C. M. Horn.)

in being transferred from the Inland division over to Western and qualifying on DC-4 aircraft?

A. I have been quite interested, but I have never had seniority enough to do that.

Q. You mean the seniority provision of your contract precludes you from making that transfer?

A. Well, in effect, yes.

Q. In other words, you could make the transfer, but you wouldn't be able to get any flying time?

A. Yes. The flying on 4's is more lucrative and consequently more attractive.

Q. So the older boys hold onto it?

A. That is correct.

Q. Is Denver, Colo., your home?

A. It is now.

Q. How many flight crews are based at Denver?

A. Currently, we have—the last time I checked it was 18.

Q. There isn't much of a turnover in flight crews on the Inland division, is there?

A. It has been very stable with the exception of the time these fellows who had been flying Route 68 bid out and then returned. That is the only change we have had for a number of years. It is stabilized. [2075]

Examiner Wrenn: Let me ask you a question: Your answer raised a question in my mind there.

Did some pilots off of Inland bid in and get runs off of Route 68 when that was awarded originally to Western?

The Witness: That is right. And while some of

(Testimony of C. M. Horn.)

them stayed in Los Angeles, the ones who affected me very directly were two very senior men, and immediately upon United's start of the operation of Route 68 they returned to Denver and I lost my reserve status.

Examiner Wrenn: They had been on Inland originally?

The Witness: They were on Inland originally and over to Route 68, and then came back to Inland off Route 68.

Examiner Wrenn: Go ahead, Mr. Renda.

Q. (By Mr. Renda): Isn't it a fact that one of the reasons you were able to obtain reserve captain status was by reason of the fact that men transferred over from Inland to fly Route 68?

A. That is correct.

Q. And you were assigned co-pilot status how long after September 15, 1947?

A. My reassignment came in December, 1947, for the very reason that we receive an instrument check every six months, and my previous instrument check had been in June and I was not due for a check until December, and they left me classed as a reserve until my instrument check was due, as there was no—no reason for doing otherwise. Then when I came up for my instrument check I was removed from that classification. But I got no captain time between September [2076] and December there.

Q. Well, now, on direct examination you testified that you were affected 30 days after September

(Testimony of C. M. Horn.)

15. Now, that is inconsistent with what you just said with respect to your change in status. Which is correct?

A. Well, did I say exactly 30 days?

Q. Well, the record will show. But I have 30 days after September 15 here. In other words, I want to know, Mr. Horn, just when you left the status of reserve captain.

A. Well, the status of reserve captain is something we are qualified for by receiving an instrument check, if we hold the rating to fly that.

Q. When did you receive that instrument check—December?

A. My next check was due in December, and it was not given because there was no longer need for me to be classed as a reserve captain.

Q. So you were reserve captain until December, 1947?

A. Yes, I am sure the company records will show that.

Q. Your earnings of \$600 a month, or approximately \$7,200 a year, prior to September 15, 1947, was that with the retroactive pay adjustment?

A. Yes. And it is better than that under the last contract; we draw five and a quarter if we are a senior co-pilot.

Q. Isn't it a fact, Mr. Horn, that should there ever be a change in schedules, and particularly a decrease in schedules operated on the Inland division, that the obvious result would be a reduction in flying time? [2077]

(Testimony of C. M. Horn.)

A. That is absolutely correct.

Q. Would not a pilot under those circumstances be as adversely affected as you would be in this particular instance?

A. I can see no other way that it can be affected.

Mr. Renda: No further questions.

Examiner Wrenn: Mr. Reilly.

Mr. Reilly: I have no questions.

Examiner Wrenn: Mr. Kennedy.

Q. (By Mr. Kennedy): Mr. Horn, as I understand it, you lost your status of reserve captain in December, 1947? A. Yes.

Q. When did you begin to lose your time as a relief captain?

A. As soon as the men who were moved back from 68 were qualified on the routes I was flying.

Q. That would be about when?

A. Roughly, two weeks.

Q. So it would be some time after the end of September, probably?

A. Yes, it would be. They were moving back to Denver and getting settled again, and starting to fly.

Q. But probably by the middle of October?

A. Yes.

Q. Is it correct that your testimony is that the reason you didn't continue as a reserve captain was that you didn't have the necessary instrument checks, and they weren't made because it seemed a futile gesture in view of the fact [2078] that there was no reserve time?

(Testimony of C. M. Horn.)

A. That is correct.

Mr. Kennedy: That is all I have.

Examiner Wrenn: Mr. Bennett.

Redirect Examination

By Mr. Bennett:

Q. However, you lost your time as a reserve captain when?

A. He just brought that out. I lost it just as soon as these fellows were qualified.

Q. Do you remember just when that was, to the best of your recollection?

A. Some time between October 15——

Q. 1947? A. Yes.

Q. Do you remember when these two pilots senior to you came into the base?

A. Well, immediately upon the loss of Route 68. I can't give you dates. They started moving and qualifying just as soon as they could get from Los Angeles to Denver.

Q. And your continuance to fly as a reserve captain after they moved into the base was during the period when they were qualifying; is that right? A. Yes.

Mr. Benentt: No further questions.

Examiner Wrenn: You may be excused.

(Witness excused.)

Examiner Wrenn: We will take a five-minute recess at this time. [2079]

(There was a short recess taken.)

Examiner Wrenn: All right, Mr. Bennett, call your next witness.

Mr. Bennett: Mr. Stephenson.

A. W. STEPHENSON

was called as a witness on behalf of Air Line Pilots Association, and, having been first duly sworn, was examined and testified as follows:

Examiner Wrenn: Give the reporter your initials and address.

The Witness: A. W. Stephenson, 316 Via Colusa, Redondo Beach, Calif.

Direct Examination

By Mr. Bennett:

Q. You are a commercial air line pilot?

A. I am.

Q. You are employed by Western Air Lines?

A. That is right.

Q. How long have you been employed by Western?

A. My seniority date with Western is as of May 5, 1928.

Q. Is that the date you went to work for Western Air Lines? A. No.

Q. When did you go to work for them?

A. August 1, 1947.

Q. Will you explain to the Examiner about that——

Examiner Wrenn: Just a minute.

(Testimony of A. W. Stephenson.)

Read the last answer, Mr. Reporter. [2080]

The Witness: I beg your pardon; August 1, 1937.

Mr. Renda: Yes.

Examiner Wrenn: Let Mr. Bennett ask his question again. I interrupted him.

Mr. Bennett: Strike the question and I will restate it.

Q. (By Mr. Bennett): What is your seniority number with Western?

A. My seniority number is three on the last published list.

Q. Are there other active pilots who are above you on the list? A. No.

Q. You are the most senior active pilot; is that correct? A. That is right.

Q. Will you explain to the Examiner how it comes about that your seniority date is '28, whereas you went to work for Western in '37?

A. The May 5, 1928, date was the day I went to work for National Parks Airways. The original route between Salt Lake City and Great Falls. On August 1, 1937, Western Air Lines took over the operation of the National Parks Airways, that is, bought the route.

Q. And what happened to the pilots of National Parks?

A. All the pilots of National Parks Airways were taken with the sale of the route and were integrated into the seniority list of Western Air Lines.

(Testimony of A. W. Stephenson.)

Q. And is that seniority list on the seniority list presently in effect on Western? [2081]

A. It is, with the addition of pilots of Inland Air Lines that were integrated into it.

Q. In September, 1947, what route were you flying for Western?

A. Route 68, Los Angeles to Denver.

Q. And you were flying that route in what capacity? A. As a captain.

Q. As a bid captain?

A. As a bid captain; that is right.

Q. When had you bid upon the route?

A. March, 1946.

Q. Were you awarded the bid at that time?

A. I was.

Q. And when did you qualify and start flying the route?

A. I completed my qualification between March 26 and April 26, 1946. I started flying the route on the 29th of April, 1946.

Q. And did you fly it continuously subsequent to that time? A. That is true.

Q. And up until when?

A. Up until September 15, 1947.

Q. Now, September 15, 1947, was that the date that the route was transferred to United?

A. That is right.

Q. How was your employment affected?

A. I was required to transfer and qualify on another [2082] route.

Q. Did you bid another route then?

(Testimony of A. W. Stephenson.)

A. Not on that exact date was it bid. It was a matter of exercising seniority rights and going to another route.

Q. What other route did you go to?

A. Route 63.

Q. And when you went to Route 63 was it necessary for you to qualify on that route?

A. That is right, it was.

Q. How long did it take you to so qualify?

A. It took me the first 22 days of September, 1947.

Q. Do you know how many hours it took you?

A. Some—about 50 hours of flying.

Q. And how are you paid for that flying?

A. We are not paid for flying while qualifying. However, if I may explain how this came about, on August 26 when the decision of the Board was announced I realized I was going on vacation on September 1, and on September 15 when I returned I would be the senior pilot on Western Air Lines, but I would not be qualified to fly on any of their routes until I completed my qualification. So I arranged for a change of vacation schedules with someone who could conveniently protect himself in the same situation, and continued to fly to Denver and qualify to Seattle on Route 63. This was not completed until about the 22nd or 23rd of September. So, between September 15, when I lost my complete qualification to earn money, so to speak, as—earn flight pay—I was about two-thirds of the way through the qualification. And I flew 21 hours

(Testimony of A. W. Stephenson.)

of time as being in charge of the flight, the [2083] qualifying flight, for which I was not paid.

Q. Have you computed what this loss to you amounted to? A. Yes. It is about \$175.

Q. And you were awarded your bid on Route 63, I take it? A. Yes.

Q. And since that time you have been flying Route 63? A. That is correct.

Q. As a captain? A. As a bid captain.

Q. Now, during the time that you flew Route 68 did you get any night flying? A. Yes.

Q. Is a pilot compensated something in addition for his night flying? A. That is right.

Q. As distinguished from day flying?

A. That is right.

Q. Can you tell us what your approximate monthly earnings were during the time you were flying Route 68?

A. Route 68 on the night runs, the pay was—as was eventually awarded, amounted to about \$1,135 per month for an 80-hour month. However, we consistently averaged close up to the maximum of 85 hours. That is our average——

Q. When you say “we,” do you include yourself?

A. Myself, and the other captains flying the route. So that would be a little bit more money occasionally than that. But it should average about that amount. [2084]

Q. \$1,135 a month? A. That is right.

Q. Now, after you left Route 68 and were re-

(Testimony of A. W. Stephenson.)

quired to qualify on Route 63, did you still get night flying?

A. A small amount. The proportion of the night flying was cut appreciably.

Q. And what was your average monthly earnings after you left Route 68 and began to fly Route 63?

A. That would be—it would be about—it would average about \$150 a month less, because the proportion of the night flying was reduced from a total of all down to about 25 per cent.

Q. And how long did that condition last?

A. That condition prevailed for about eight or nine months until the spring of 1946. Then schedules and experience on Route 63 permitted the senior captains to go to the night runs. But——

Examiner Wrenn: What do you mean——

The Witness: I mean that originally there was a considerable period of time before it was permissible for the pilot to bid a particular run, a particular series of round-trips over the route. It was a matter of qualifying.

For instance, the company has a very good rule that you must fly 100 hours over the route before you fly a trip on which there is listed night flying. And just as we did on Route 68, we went farther and continued alternating trips until we have several months of experience on Route 63.

Q. (By Mr. Bennett): Have you translated this loss into a matter of [2085] dollars, Captain?

A. It would be approximately nine months at \$150 a month. \$1,350.

(Testimony of A. W. Stephenson.)

Mr. Bennett: May I have this marked for identification as Exhibit 1, Mr. Examiner?

Examiner Wrenn: Well, now, are you going to offer all of these documents that you have submitted here marked Exhibits 1 through 18?

Mr. Bennett: Yes, I am.

Examiner Wrenn: Well, now, why not mark the entire series for identification at this time?

Mr. Bennett: The difficulty with that, Mr. Wrenn, is that there is such a great length of time elapsed between the time these exhibits were compiled and submitted that it has been necessary for us to supplement them in order to bring down to date the information therein in order to have a complete picture, it has been necessary to supplement Exhibits 2 through 17. We have supplemental Exhibits 2 through 17 which are identical with the Exhibits 2 through 17 which you have, but which, however, contain supplemental material to that which brings those exhibits—the statistical exhibits—down to date to include the picture on Western Airlines from the date that these exhibits stopped until the present time.

Examiner Wrenn: Have you furnished that to other counsel?

Mr. Bennett: I have them here this morning.

Examiner Wrenn: Why haven't they been furnished to counsel before?

Mr. Renda: Mr. Examiner, I am going to reserve my [2086] objection until such time as Mr. Bennett makes an offer of that new material, but at that

(Testimony of A. W. Stephenson.)

time I am going to make a vigorous objection. I submit that if that is supplemental to these exhibits they should have been submitted to us a long time ago. We have had no opportunity to study it and to prepare cross-examination on it.

Mr. Bennett: This is exactly the same statistical material except that it is brought up to date.

Examiner Wrenn: There is no argument about that, but these gentlemen should have an opportunity to look at these before today.

Mr. Bennett: I have them here today.

Examiner Wrenn: I know that, but why were they not submitted previously?

Mr. Bennett: We didn't have them prepared until a few days ago.

Mr. Reilly: As a matter of fact, he didn't even supply the initial exhibits, as you directed him to do, until some time in May.

Mr. Bennett: May I have the exhibit marked?

Examiner Wrenn: I understood you were going to offer Exhibits 1 through 18 as they have been distributed. I am going to direct that they be marked for identification. If you have further material to add to them I suggest that you give it to counsel immediately, and when they make their objection I will rule on the situation at that time.

(A.L.P.A. Exhibits Nos. 1 to 18, inclusive, were marked for identification.)

Examiner Wrenn: Proceed, Mr. Bennett. [2087]

Q. (By Mr. Bennett): I show you a document

(Testimony of A. W. Stephenson.)

now marked for identification as Air Line Pilots Exhibit 1, and ask you to state who compiled that exhibit?

A. It was compiled under my direction.

Q. And supervision? A. That is right.

Q. And will you tell us where the material was obtained for the compilation of this exhibit?

A. From my own knowledge, and through contact and working with the individuals mentioned in the exhibit.

Q. When you say the individuals mentioned in the exhibit, you mean the individuals whose statements are contained in the exhibit?

A. That's is right.

Q. On pages 2 to 7? A. That is right.

Q. Where were these statements obtained?

A. In Los Angeles, Calif.

Q. And what were the circumstances of your meeting with these individuals?

A. We called them to make the statements; first, to discuss and get at the facts in each individual's case.

Q. And were they selected, or did you call—how did it come about that these particular individuals were called?

A. Well, you came to Los Angeles, to Hollywood, and told me you wanted to take some statements from pilots affected. And I proceeded to contact the individuals who were in town available to get together and make the [2088] statements, make a sworn statement.

Q. Were these individuals selected, or did you

(Testimony of A. W. Stephenson.)

just pick them at random because they happened to be in the city at that time?

A. The first governing factor in that was to contact to see who was in town and to see who could be available for making such a statement, and also to give some consideration to the distance that some men might have to travel to make a statement. And then everyone that could be contacted was contacted.

Q. And they came in and made a statement, did they? A. They did.

Q. Was that a sworn statement?

A. That is right.

Q. What have you done with those statements? Have you still got the sworn statements?

A. I have.

Q. And those sworn statements, one copy of it, was furnished to the Board here, was it not?

A. That is right.

Q. What have you done in this exhibit with reference to those statements?

A. Briefed them—that is, taken the pertinent information, what I consider the pertinent information in it, and reduced it to a shorter, less volume.

Q. Now, when you moved to Route 63 did you displace any pilot there? A. That is right.

Q. Who did you displace? [2089]

A. It is hard to select the individual, for this reason: Fourteen of us—not fourteen, but twelve of us moved over, or were in the process of changing to that route over a period of 45 days. And to name

(Testimony of A. W. Stephenson.)

any individual that stopped flying that route the day I started would be rather difficult to do. However, I know of one individual from his place on the seniority list who would be pretty close, No. 7 in that list. Mr. John Barchard.

Q. Well, when these 14 individual pilots were moved into that base, where did they come from?

A. There was no move involved, no move into Los Angeles base when 63 was extended.

Q. Will you strike the question, please. I would like to ask that over.

When you moved from Route 68, how many captains were moved from that route at that time?

A. The original list of bid captains at the last time the official notice was given us of who held bids on 68 contained 14 names.

Q. And those 14 captains were required to move off of 68 necessarily; is that right?

A. They were required to quit flying Route 68.

Q. How many of them went to Route 63? That you know of.

A. In bid captains, all but—there were two who went to Denver and 12 indicated or retained the rights they already had on Route 63.

Q. What did that do to the captains who were flying Route 63 at the time? [2090]

A. That put some of the junior DC-4 captains back to flying the Los Angeles-San Francisco portion of 63. Next in the sequence of seniority they

(Testimony of A. W. Stephenson.)

went back to flying DC-3's on Route 13. That is generally the picture.

Q. And what happened to the men who were displaced by those people who moved back?

A. They went back to whatever their seniority entitled them to as a reserve captain or co-pilot, or off the pay roll.

Q. When you say the pay roll, were there any pilots who were dropped from the pay roll on or about this time? A. Yes.

Q. Did the company give notice of any removal from the pay roll? A. It did.

Q. Do you know when that took place?

A. The date remains in my memory. It was September 4, 1947.

Q. And how many were notified of removal on that date?

A. I believe the list of names was 23.

Q. And were those pilots in fact dropped from the—furloughed?

A. Yes, with the exception of the top three or four who at that time were able to stay on for a little while longer because of vacations.

Q. Were they ultimately furloughed?

A. Yes. All of those men had been, as far as I remember, given furloughs at some time or other subsequent to [2091] September, 1947.

Q. Now, Mr. Stephenson, you are prepared, are you not, to sponsor this exhibit? A. I am.

Mr. Bennett: I offer this exhibit in evidence.

Examiner Wrenn: The ruling will be deferred

(Testimony of A. W. Stephenson.)

on it until you finish all your exhibits. At that time I will rule on all of them together.

Q. (By Mr. Bennett): Will you now look at this exhibit and tell us what it shows?

A. The second paragraph shows that the monthly pay of DC-4 and DC-3 captain air line pilots with Western Air Lines in September, 1947, was as follows: DC-4 captains, \$1,035; DC-3 captains, \$815—

Examiner Wrenn: Let me interrupt here. There isn't any need to read this into the record. We can all see the figures in the exhibit.

The Witness: I wanted to explain how I arrived at that figure.

Examiner Wrenn: All right, go ahead.

The Witness: The \$1,035 is a figure of an eight-year DC-4 captain flying 80 hours a month, half day and half night. That is as good—as near as I could decide, a good average figure for a DC-4 captain.

The DC-3 captain—

Examiner Wrenn: That is all over Western's system; it doesn't relate to any particular run?

The Witness: That is right, sir. [2092]

The DC-3 captain is a five-year captain half day and half night.

The DC-4 co-pilot, \$420, and the DC-3 co-pilot, \$350, the reason for that is that when Western started operating Route 68 there was no pay scale for DC-4 captains or co-pilots. The pilots hoped to be able to establish a four-engine rate of pay

(Testimony of A. W. Stephenson.)

that was higher than the two engine; and by the same token we expected we might come out of negotiations with an equipment differential for the co-pilots—whenever it could be done. So it was natural that when that was settled that the senior co-pilots were inclined to want to fly DC-4's when they could.

So in arriving at an average figure of \$420, that is 60 less than the top that was finally paid. But it would be an average figure down the line.

For instance, the last trip I made on Denver, because of the qualifying and starting Route 63, I had the junior co-pilot on the route flying with me. The same is true of the DC-3's co-pilots' pay statement. It is not a fixed figure. It is an average.

Q. (By Mr. Bennett): Does this exhibit, Captain Stephenson, purport to show——

A. If it is in order, may I clarify the Examiner's question? This \$1,035, that is, as I explained, half day and half night on a DC-4 captain with eight years' experience. That is what that figure is. And I figured that was a good average figure.

You asked, I believe, if that was the rate of pay over [2093] the system.

Examiner Wrenn: Well, what I was thinking about was whether it was based on system-wide, or just on Route 68.

The Witness: There is no terrain pay on that route, sir, and none on Seattle.

Examiner Wrenn: All right; thank you.

(Testimony of A. W. Stephenson.)

Q. (By Mr. Bennett): Are you acquainted, of your own knowledge, with what occurred in the employment situation of many of these individuals who are named in this exhibit? A. I am.

Q. From what source do you gain your knowledge of that?

A. From talking with the individual, and as master chairman of the Western Air Lines Council of A.L.P.A. it was my duty to keep all assignments and bid awards, and copies of all bids, to be advised as to who was—well, to see that things were in order, so to speak.

Q. Did the company furnish you, or did you obtain at the time that they were issued, all bids that were awarded to these individuals during this period, and subsequently?

A. That is right, I did.

Q. And you are acquainted with what happened to each of the pilots during this period?

A. That is right. I have the records, and am acquainted with the situation.

Q. Yes.

Now, Mr. Stephenson, does this exhibit purport to show the loss to all of the pilots who had any loss by reason of [2094] or subsequent to September 15, 1947?

A. It neither shows all of the losses nor any of the pilots. It is a cross-section of junior and senior, comparatively senior pilots, and co-pilots, and it is just a sample, so to speak, of what occurred to

(Testimony of A. W. Stephenson.)

different individuals in different places on the seniority list.

Q. Have you always worked as a pilot in the industry, Mr. Stephenson? A. No.

Q. What other capacities have you held?

A. From December, 1935, to August, 1947, I was vice-president of operation—I beg your pardon, 1937, I was vice-president of operations of National Parks Airways. And from August 1, 1937, until April of 1939 I was division superintendent at Salt Lake for Western Air Lines.

Q. And in your capacity as division superintendent and vice-president of operations, what were your duties?

A. To direct the operations of the route of what is now 19.

Q. During that period did you make up schedules or have schedules made up under your jurisdiction or supervision?

A. The traffic department made the passenger schedules with our cooperation.

Q. Now, do you know, Captain Stephenson, how many pilots are necessary to keep a DC-4 in operation by an air line?

A. An accepted figure for that is about—that is, for every DC-4 airplane, about three and a half crews. About [2095] seven men is a good average figure.

Q. Is that the average figure or is that the minimum figure?

A. When you get into an efficient operation, par-

(Testimony of A. W. Stephenson.)

ticularly such as 68, it gets to be a minimum figure.

Q. When you say three and a half crews, that is two men to a crew? A. That is right.

Q. It takes seven men; is that correct?

A. That is right.

Q. Now, what was the operation of Route 68, the normal operation on Route 68, do you know?

A. The normal operation was four round trips a day between Los Angeles and Denver.

Q. How many DC-4 planes does that require?

A. It took four airplanes and just under 39 hours of flying.

Q. And so how many men in all would that require?

A. Well, I have calculated that. The absolute minimum, if every man flew 85 hours a month for a 30-day month, would be 28 men. That is a physical impossibility. He would have to fly right up to the maximum and it cannot be accomplished.

When it comes down to it, this figure that I have used, 80 hours per month, is a month-in-and-month-out monthly average that a pilot can fly, that the company can get out of their pilots—or put it the reverse way, the pilot can fly and earn money. So in summer months when there are no cancellations, or they are at a minimum, they would take at least [2096] two to three more money to operate that route and give vacations, and so forth.

Coming at it another way, as to time, if a pilot gets a two weeks' vacation for which he is not required to fly additional time when he gets back for

(Testimony of A. W. Stephenson.)

that month, there is no way in the world that you can average much over 80 hours per month.

Q. Western Air Lines transferred four DC-4 airplanes with the transfer of the route, did they not?

A. They did.

Q. Were those planes replaced in Western's operation?

A. Not for a considerable time.

Q. How long a period of time before there was any additional equipment acquired by Western to replace these DC-4's?

A. About a year.

Q. And at that time what planes were acquired by Western—what new equipment?

A. CS-240's, Convairs.

Q. How were they placed in operation?

A. We received our first airplane in June, about June of 1948; started our training program at Ardmore, Okla. That involved captains and co-pilots, and the training was done at Ardmore, and the airplanes were prepared for carrier service, and the operation, I believe, was started in August with one trip.

Q. August of 1948?

A. That is right. 1948.

Q. How were the balance of the planes placed in [2097] operation?

A. They were placed in operation over a period of several months. The original plane was to have the operations going in about December of 1948. Actually we didn't get around to a Convair on every

(Testimony of A. W. Stephenson.)

flight until I believe the spring of 1949. That was our goal, a Convair on every flight.

Q. Now, turning to page 2 of the exhibit, and calling your attention to pages 2, 3, 4, 5, 6, and 7 of that exhibit, having to do with the statements of the pilots regarding their employment subsequent to the sale of Route 68, are you prepared to state, Mr. Stephenson, that those are true and correct statements of the manner in which their employment was affected on the dates that are indicated in the statement? A. I am.

Q. Is it a true and correct statement?

A. It is, to the best of my knowledge and belief.

Q. I believe you stated you had the records of the different bids and assignments of all of these pilots that were either furnished you by the company or gotten from the company at the time that these assignments and bids were awarded; is that right?

A. That is true. Sometimes, in the case of the junior pilot, he didn't even rate a place on the list, and it was automatically understood what his position was.

Q. And you kept track of the movement of these pilots, in your capacity as Council chairman of the Air Line Pilots Association, and the senior pilot on the line? [2098] A. That is right.

Q. Now, calling your attention to page 8 of the exhibit, which translates these losses into dollars and cents, will you kindly tell us how it was accomplished?

(Testimony of A. W. Stephenson.)

A. That was accomplished by myself and the individuals taking the records that he and I had, and checking dates and periods of time for which we were—in which we were interested, to make up a statement of such a loss, or such an effect.

Q. And then you and he computed it at that time? A. That is right.

Q. I see some of these pilots did not compute their loss, and said “not estimated.” Why was that done?

A. Because the individual didn't have enough information on himself as to what his pay checks or monthly flying hours had been. And for that reason neither one of us felt a definite commitment as to any specific sum would be in order. We didn't think it was proper. We couldn't state what it was.

However, on that there are instances where individuals, had they had their records, could have made it. It could have been very easily calculated.

Mr. Bennett: You may cross-examine.

Examiner Wrenn: Mr. Crawford, do you have any questions of the witness?

Mr. Crawford: None.

Examiner Wrenn: Mr. Renda, you may examine the witness. [2099]

Cross-Examination

By Mr. Renda:

Q. Mr. Stephenson, do I understand your testimony to be that the only adverse effect resulting

(Testimony of A. W. Stephenson.)

from your being transferred from Route 68 to Route 63 is measured in dollars and cents?

A. No.

Q. In your particular case?

A. No. I don't measure it in dollars and cents.

Q. You are No. 3 on the seniority list, are you not?

A. That is right.

Q. There is no one higher than you who is on active flying status; is that correct?

A. Right.

Q. So you can bid and obtain the privilege of flying on any run, the most lucrative run that Western may have; is that correct?

A. That is right.

Q. Now, you testified that the only loss sustained was one of approximately \$175 due to loss of flying time, as you were qualifying on Route 63?

A. No, I did not.

Q. What is your testimony as to loss in dollars and cents?

A. I testified that I lost \$175 qualifying and as a result of qualifying and preparing all pilots was an additional \$1,350.

Q. All right, I will ask you to state what were your total earnings received from Western Air Lines in 1946?

A. Well, I am not prepared to give that. [2100]
I don't have my——

Q. If I were to tell you that in 1946 you were paid and earned \$11,383.13, would you dispute that?

A. No, I don't think so.

(Testimony of A. W. Stephenson.)

Would you explain to me whether that was what I was paid that year, or what I earned?

Q. That is what you earned, and included the retroactive pay adjustment.

A. I think that is a good enough figure.

Q. Do you recall what your earnings were in 1947? A. They were more than that.

Q. If I were to tell you that in 1947 you earned \$12,382.22, would you dispute that figure?

A. No.

Q. Do you recall what your earnings were in 1948 after the sale of Route 68?

A. Do you have a figure on it?

Q. If I were to tell you that figure was \$12,-517.45, would you dispute that figure?

A. No.

Q. So wherein lies the adverse effect in dollars and cents in your particular case before and after Route 68 was sold?

A. Because it is only—it was 1948 before we got back to a basis of getting full advantage for night flying on Route 63.

Q. Well, now, you testified, Mr. Stephenson, that you sustained a loss of approximately \$150 in pay per month for a period of between eight and nine months following the sale [2101] of Route 68; is that right?

A. I believe the figure was \$175, wasn't it?

Q. I have \$150. I stand corrected if that was not right. Let's make it \$175. The record will show the correct figure. But you testified to that effect.

(Testimony of A. W. Stephenson.)

A. May I have the question again?

Q. That you sustained a loss in dollars and cents of approximately \$150—or \$175, if you will—in each and every month for nine months following the sale of Route 68.

A. Just a minute. That is a different thing.

Q. Well, will you answer my question? Did you or did you not?

A. May I have the question now?

Examiner Wrenn: Read the question again.

(The question was read.)

The Witness: That figure was \$150 a month.

Q. (By Mr. Renda): That is what I thought. Now, will you answer the question?

A. I am sorry. I sustained that loss not getting full advantage of full night flying time until 1948. I don't remember the exact dates, or anything else.

Q. How long did you hold the position of Master Councilman for Western's A.L.P.A.?

A. 1948. And as assistant to the Master Councilman in 1947.

Q. I assume in that capacity you are more than thoroughly familiar with the terms and provisions of the contracts that have been in effect between Air Lines and [2102] A.L.P.A.

A. I wouldn't use the statement "more than thoroughly." I have a copy of it, and I know the intent of a lot of it and what it means.

Q. I presume you men knew in September, 1947, or any time prior thereto, that if the sale of Route 68 was approved you would have to qualify on another route?

(Testimony of A. W. Stephenson.)

A. If the pilots were not transferred with the route, yes.

Q. Now, what is your claim in this proceeding, Mr. Stephenson? Are you seeking monetary compensation for the dollars and cents sustained; is that your position? A. No.

Mr. Bennett: I think that question is not a proper question. I think our position is set forth completely in our statement and in our exhibits.

Mr. Renda: I know the position of the A.L.P.A., Mr. Examiner. I want Mr. Stephenson's position.

Examiner Wrenn: Then why all of this testimony as to the amount of damage this particular pilot sustained?

Mr. Bennett: The answer to that, Mr. Wrenn, is this: The issue in this case is how is a man damaged. You can only show damages in one of two fashions, either a monetary loss—and any loss in a situation of this character boils down to money—a loss of seniority, a loss of working conditions, is all measured in money, because if a man's seniority goes backwards his ability to earn also goes backwards.

Examiner Wrenn: Yes, but I understand you took the position originally—I have looked back at your pleadings [2103] here, and your testimony originally that the pilots should go with the route. At that time that was your position and that is still your position. Now, I don't see what bearing what Captain Stephenson's loss here, and so forth, in showing adverse effect, has to do with that. Your

(Testimony of A. W. Stephenson.)

position is that the pilots should go with the route.

Mr. Bennett: It still is our position, but how can we show damage without showing loss of seniority. This man was No. 1 on the list. Obviously, his seniority couldn't be affected under——

Examiner Wrenn: I understood him to say that he had a considerable monetary loss here.

Mr. Bennett: That is right.

Examiner Wrenn: Suppose the Board says, "All right, we will agree with your statement here that the pilots should go with the routes, and we will impose the condition that the pilots should go with the route."

Now, what is the position here of Captain Stephenson on his \$1,350, and Mr. Kennedy here on his \$3,160, and all these others listed here in Exhibit No. 1?

Mr. Bennett: Are you saying you want the man to answer the question, Mr. Examiner?

Examiner Wrenn: I want to know the position here. The question was addressed to him as to his particular position, and you interposed an objection that it isn't germane.

Mr. Bennett: I withdraw the objection.

You may answer, Mr. Stephenson.

The Witness: May I have the question again?

Examiner Wrenn: Read the question, Mr. Reporter. [2104]

(The question was read.)

Examiner Wrenn: Are you directing that question personally to Captain Stephenson?

(Testimony of A. W. Stephenson.)

Mr. Renda: Yes.

Q. (By Mr. Renda): Do I understand the Board should find that there has been an adverse effect, and that they should attach a condition—the transfer of you as a former pilot on Route 68 to United Air Lines, and that you would not seek to recover any claim in dollars and cents against Western for this past period?

A. For the items mentioned here, no.

Q. And do you agree with the statement made by your counsel that adverse effect can only be measured in terms of——

Mr. Bennett: I didn't say that. I said dollars and——

Mr. Renda: I will reframe the question.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Would you agree with me that adverse effect can only be measured in terms of dollars and cents?

A. No. I would agree with you that it is the only way that you can express—the principal way that you can express adverse effect.

Q. All right. If there is any other way that you can evaluate adverse effect in this particular case, and with respect to your particular case, other than dollars and cents, please state it. What are they?

Or to state it differently, how were you adversely [2105] affected in any other way according to your own testimony than in your pay envelope?

A. I was adversely affected in this way: When

(Testimony of A. W. Stephenson.)

we started flying Route 68 we started it with DC-4's. The company had DC-6's on order. We expected to be eventually flying that route with DC-6's. That is considered a step up in the pay bracket, and a step up in pilot qualification—heavier aircraft, faster aircraft. That is something that for 33 years I have always been striving to do—to become a better pilot.

Q. Mr. Stephenson, under the terms of this contract between pilots represented by A.L.P.A. and Western Air Lines, is it not the prerogative of management to determine what type of aircraft it wants to fly on its routes?

Mr. Bennett: I suggest, Mr. Examiner, if the contract provision provides that the contract will speak for itself. I think the contract is even a part of the record of this case.

Mr. Reilly: I support that question, Mr. Examiner, because I am going to ask this witness some questions, and I would like a ruling on Mr. Renda's question.

Examiner Wrenn: What is your objection?

Mr. Bennett: The contract speaks for itself. If the contract makes that provision, then so be it.

Examiner Wrenn: Can you state whether that provision is in the contract? That is what I want to know.

Mr. Bennett: What provision? The one he is talking about? He should know whether it is in there or not. I don't know what is in there in each detail. [2106]

(Testimony of A. W. Stephenson.)

Mr. Renda: In order to simplify this, may I withdraw that question and ask a new question?

Examiner Wrenn: All right.

Q. (By Mr. Renda): Do you contend that the employees of Western Air Lines, even those represented by A.L.P.A., have any right to tell management what type of aircraft to fly on its routes?

A. Certainly not.

Q. So if management chose not to use DC-6's and chose to fly Convairs, that is within management's own right?

A. That is right.

Q. And if you choose not to fly DC-6's and wanted to fly Convairs, that is your prerogative.

A. That is right.

Q. You are not held to any agreement to have to work for Western?

A. That is right.

Q. What are some of the other instances of adverse effects that you can evaluate in other than dollars and cents?

A. Any pilot knows that it is a step backwards for a man to be flying as captain on the lefthand side of an airplane, being in control of an airplane, in charge of the flight, and have to move over to the righthand side and be the second in command. It is a step backwards to the individual.

Q. Did that happen to you, Mr. Stephenson?

A. It didn't happen to me, no.

Q. I am asking you only with regard to your particular case.

A. You didn't ask that question. [2107]

(Testimony of A. W. Stephenson.)

Q. I am now, then. Let's confine it to your particular case for the time being.

A. May I have your question repeated?

Q. The question is: If as you claim you cannot just evaluate adverse effect in dollars and cents, I want to know what those others are that don't result in a dollars and cents adjustment.

Examiner Wrenn: Are you talking about Captain Stephenson?

Q. (By Mr. Renda): Just Captain Stephenson.

A. In measuring this particular case, and in the way it was handled with no transfer, it puts me in the position of wondering how long my job is going to last. There is an adverse effect on any individual when he begins to wonder how long he is going to be able to continue to fly even Convairs.

Q. Now, you know that there is no issue involved that your job was at any time placed in jeopardy. You are protected under the contract to exercise your seniority; is that right? A. Oh, yes.

Q. So there was at no time jeopardy?

A. Well, if you set up a precedent, and if you sold 63, it would be in jeopardy.

Q. Well, we are not getting into the realm of speculation. Let's keep this to Route 68. That is bad enough. As long as you are qualified to fly, you are protected under the terms of your contract?

A. As long as Western Air Lines has a route to operate, [2108] yes.

Q. That is true. That goes without saying. So

(Testimony of A. W. Stephenson.)

that that point as to adverse effect we will pass for the time being.

Are there any other factors?

A. Offhand, in my case, I don't think so.

Examiner Wrenn: Let us recess until 2 o'clock this afternoon.

(Whereupon, at 12:35 p.m., a recess was taken until 2 p.m. of the same day.) [2109]

Afternoon Session—2:00 P.M.

Examiner Wrenn: All right, gentlemen, may I have your attention?

You may continue with the cross-examination of the witness, Mr. Renda.

Whereupon,

W. A. STEPHENSON

resumed the witness stand, and was examined and testified as follows:

Cross-Examination

(Continued)

By Mr. Renda:

Q. Mr. Stephenson, the 14 crews who were flying Route 68, by exercising their seniority rights under the contract, are they now most of them flying Route 63? A. Most of them, yes.

Q. And pilots who fly Route 63 are based where?

A. Los Angeles.

Q. And the operation is an operation from Los

(Testimony of A. W. Stephenson.)

Angeles to Seattle with a turnaround at Seattle; is that correct?

A. And also a turnaround at San Francisco.

Q. Well, that is true. Let us break it down. The shuttle trips between Los Angeles and San Francisco turn around at San Francisco? A. Yes.

Q. But the Los Angeles-Seattle flights turn around at Seattle. That is where the pilot lays over? A. That is right.

Q. Los Angeles is also the base for the pilots who are flying the Denver route; is that [2110] correct? A. That is correct.

Q. And the extension of Route 63 from San Francisco to Seattle is operated actually as a through flight from Los Angeles to Seattle?

A. The extension is operated that way.

Q. In other words, it is an adjunct?

A. That is right.

Q. There are no crews based at San Francisco, and there are no crews based at Seattle. The flights are—— A. That is right.

Q. Now, you mentioned four airplanes having been sold to United Air Lines and there not having been any replacement in equipment for a considerable time thereafter. Do you know what was our experience with respect to utilization of DC-4 aircraft in October, 1947?

A. I don't have the figures on utilization. They are available here in C.A.B. records.

Q. Do you know what was the experience in the

(Testimony of A. W. Stephenson.)

industry for utilization of DC-4 aircraft in September of 1947? A. No, I don't, sir.

Q. Or October of 1947?

A. No, because that is a public record.

Q. Do you know whether the utilization of DC-4 aircraft by Western was substantially greater than the industry average, or less?

A. I would be inclined to think it was very good after September of 1947.

Q. Now, will you please turn to your Exhibit No. 1—excuse me, A.L.P.A. Exhibit No. 1 which you are sponsoring. [2111] The information set forth in this exhibit is information which you have within your own knowledge; is that correct?

A. That is right, and the sworn statement of the individuals.

Q. Now, the sworn statements you refer to, are they the affidavits that copies of which were submitted to the Board by letter addressed to Mr. Thomas L. Wrenn, Assistant Chief Examiner, dated November 14, 1948?

A. If I could see them——

Q. Yes. A. Yes.

Q. Where were these affidavits which you have now notified, where were they prepared?

A. The original affidavit was made in Los Angeles.

Q. Did all these men that you have affidavits for in your possession, did they all come to Los Angeles and did you confer with them in Los Angeles?

A. They were all in Los Angeles.

(Testimony of A. W. Stephenson.)

Q. Did all of them live in Los Angeles?

A. They did at that time.

Q. That is what I had reference to Mr. Stephenson, was at that time.

And the affidavits were prepared in Los Angeles, signed by the various affiants in Los Angeles, and notarized by Mr. Bennett in Los Angeles; is that correct?

A. The original affidavit was made in Mr. Bennett's handwriting. He wrote the affidavit. The individual signed it, and it was notarized, and these are copies of the original affidavit typed and properly signed and executed. [2112]

Q. I just wanted to ascertain if all this was done in Los Angeles? A. That is right.

Q. The preparation of the affidavit, the signature of the affiant, and the notarization?

Mr. Bennett: I might clear that up. I was in Los Angeles. I did have the affidavits in longhand, and every man signed it. Then I took the affidavit back to Chicago and they were redrafted on the typewriter and were forwarded out to Los Angeles for signature. They are a duplicate of the longhand one, and that is the manner in which they were executed.

Q. (By Mr. Renda): You will notice on the first page of your exhibit you have indicated the salaries for DC-4 captains and DC-3 captains. Will you please tell us what would be the earnings of a captain with eight years' seniority flying 40 daylight hours and 40 nighttime hours in a given month

(Testimony of A. W. Stephenson.)

on Convair equipment? Those are the same conditions you took into consideration in arriving at the salary of a DC-4 captain.

A. It would be approximately \$40 less on the Convair.

Q. Forty dollars less on the Convair than it would be on the DC-4? A. That is right.

Q. Now, you will notice in the last paragraph of page 1, about the sixth line, you refer to the company discharging some twenty-odd pilots.

A. Twenty-three pilots were removed from the payroll.

Q. Yes. Those pilots that you referred to were the [2113] pilots that were mentioned in the letter from Mr. J. L. Thayer, Chief Pilot for Western Air Lines, to all pilots, dated September 4, 1947; is that correct?

A. There were pilots mentioned in one letter dated that day.

Q. Yes. And you recall the names of those pilots, do you?

A. If I had a copy of the letter. I can't remember 23 names just offhand.

Mr. Bennett: Do you want me to hand him a copy?

Mr. Renda: Yes, if you have a copy handy.

Mr. Bennett: Yes, I think I have a copy of it.

Q. (By Mr. Renda): First, let's take Mr. Babcock—

Examiner Wrenn: Is that the letter that is contained in Western's Exhibit W-8, Mr. Renda?

(Testimony of A. W. Stephenson.)

Mr. Renda: Yes, Mr. Examiner. Since I have not had our exhibits identified, I refrained from referring to it at this time.

Examiner Wrenn: All right.

Q. (By Mr. Renda): Do you know when Mr. Babcock was first employed by Western Air Lines?

A. I have the figures on it. Yes, I believe I have a copy of the notice from the Chief Pilot of his first flight, and so forth. I don't have it in front of me.

Q. Do you have that information with you?

A. I have it with me, yes.

Q. Do you have information with respect to all the [2114] pilots mentioned in this letter that I have referred to, as to date of employment, and times during which they were furloughed between 1946 and 1948?

A. I don't have all of the individual records of when they were on and off the payroll. The individuals themselves have. I have some of it, particularly pertinent to these affidavits.

Q. Have you examined Western Air Lines Exhibit No. WR-1—

Which, Mr. Examiner, of course, has not yet been marked for identification at this time.

Have you examined that exhibit?

A. Not too closely, no.

Q. But you have examined it?

A. No, not closely.

Q. I direct your attention to the remarks opposite Mr. Babcock's name. You will notice he was

(Testimony of A. W. Stephenson.)

recalled May 1, 1948. Do you know what date he was furloughed?

A. You have the statement here that it was September 21, 1948. I would assume that is probably correct.

Q. Do you know when he was furloughed in 1947? A. Well, this letter——

Q. That would be pursuant to this letter, wouldn't it? A. Yes.

Q. Do you know when he was called to active flying duty in 1947?

A. As I said, that might have been his original report to duty.

Q. Isn't it a fact that he was hired for the first time [2115] on May 1, 1948?

A. What was that?

Mr. Bennett: You mean 1947?

Q. (By Mr. Renda): May 1, 1947.

A. I can check it with the record I have and answer that question. I don't have all the Mays of that information. If you are inquiring as to that I would like to have use of my own records.

Q. Do you know if he is flying at the present time for Western Air Lines? A. No, I don't.

Q. Is it a fact that he was recalled on June 1, 1949, and is presently in our employ?

A. If he was recalled, then he is no doubt working now.

Q. You have investigated all these cases, I presume?

(Testimony of A. W. Stephenson.)

A. I did at the time this—pertaining to this exhibit?

Q. Pertaining to these pilots that were furloughed pursuant to letter dated September 4, 1947.

A. I did investigate, get the story as to what happened on that date. And the years '47 and '48.

Q. I invite your attention to the second pilot listed, Howard Critchell. You will notice he was hired June 23, 1947, furloughed September 18, 1947, was rehired on September 1, 1948, as a crew scheduler. Do you know what his present status is?

A. He is flying now. [2116]

Q. And do you know since what date?

A. Well, he dropped his duties as crew scheduler in the spring some time, and went back to flying.

Q. Mr. Critchell was hired subsequent to the hearing in the Route 68 case; is that correct?

A. Yes.

Q. Let's look at Mr. Donald R. Edgerton.

A. Before I go further in this—

Mr. Bennett: Just a minute, please.

Examiner Wrenn: All right.

Mr. Bennett: I don't think this is proper cross-examination. The only direct examination was that twenty-odd pilots were released from the seniority list. And I don't think it is a proper cross-examination at this time to require Mr. Stephenson to sponsor Western's exhibit. In its proper order, I take it, Western will sponsor its own exhibit.

Examiner Wrenn: I agree with you it isn't

(Testimony of A. W. Stephenson.)

proper for the witness to sponsor the exhibit, but he is not sponsoring the exhibit——

Mr. Bennett: Well, to put in Western's case. If they want to call Mr. Stephenson at the proper time, we have no objection to that. But the point I make is that it is not proper cross-examination. We didn't indicate what pilots, or whether they were hired afterwards or rehired or furloughed or employed afterwards. We submit this is not proper cross-examination.

I object to this line of questioning.

Mr. Reilly: Mr. Examiner, this witness has put in here a [2117] letter from Western Air Lines to all pilots. He says he has investigated them all as of the date of the exhibit. That exhibit is dated sometime in June, 1949. Mr. Renda is asking questions with respect to the validity of the testimony of Mr. Stephenson. He has already asked him about certain pilots and we think it is highly proper to——

Mr. Bennett: On the contrary, he has discussed a pilot here who was not on the payroll at that time.

Examiner Wrenn: You don't have any objection, if Mr. Renda says he is going to call this witness as his witness, to him asking the questions, do you?

Mr. Bennett: No, at the proper time.

Mr. Renda: What is wrong with now?

Mr. Bennett: All right.

Mr. Renda: There will be a witness to sponsor

(Testimony of A. W. Stephenson.)

our exhibit, but I think it is proper for me to cross-examine Mr. Stephenson, who sponsored Exhibit No. 1 and said there were twenty-odd pilots discharged in September, 1947——

Examiner Wrenn: He has agreed with you that the twenty you are talking about are those listed in Western's Exhibit No. 8.

Mr. Renda: Yes.

Mr. Bennett: That those are the same pilots.

Mr. Renda: I have asked him about Mr. Critchell and Mr. Babcock——

Examiner Wrenn: I don't want Captain Stephenson to sponsor something now that he hasn't testified to.

The Witness: I am perfectly willing to check my records and check this list against them and answer your questions. [2118]

Mr. Reilly: That is the purpose of rebuttal exhibits. He should have checked them before he came here.

Mr. Bennett: You mean to sponsor the exhibit?

Mr. Reilly: We are talking about checking the exhibits.

Examiner Wrenn: All right, let's go ahead.

The Witness: I am prepared to check my records against this and appear as a witness for Western, or anybody else, to go through it. But I don't see how I can be expected to agree to mass of information here as to dates of individuals without being permitted to check my records.

Examiner Wrenn: Well, of course, their ques-

(Testimony of A. W. Stephenson.)

tion now is: You had access to them, and why have you not had an opportunity to check them until now?

The Witness: The records I had access to were the original hiring dates of the individual, letters on which he might have been furloughed. I never received any letter from the company as to the date the man was told to report back to duty. He became of interest to us when he was back on the payroll.

Examiner Wrenn: Well, do you have your data with you?

The Witness: Yes, sir. But it would take some time to check it across.

Mr. Reilly: May I ask the witness a question because we are talking about——

Examiner Wrenn: All right.

Mr. Reilly: Have you ever seen Western's rebuttal Exhibit No. 1 before today, Mr. Stephenson?

The Witness: I have seen it, but I have never——

Mr. Reilly: You never thought it important enough to [2119] check those figures until now?

The Witness: I never had time to check all those figures.

Mr. Reilly: Why did you come to the hearing if you did not have time to have them checked?

Mr. Bennett: I will object to that.

You came here as a witness on behalf of A.L.P.A.?

The Witness: That is right.

(Testimony of A. W. Stephenson.)

Mr. Bennett: Did you come here to sponsor this exhibit?

Examiner Wrenn: All right, now, let's not have any talk about sponsoring the exhibit. It is clearly understood that this witness is not sponsoring this exhibit.

Mr. Renda: Definitely. As much as Mr. Stephenson wants to sponsor it for Western, we will have our own witness. But the purpose of my cross-examination, and I am going to have a lot of it——

Examiner Wrenn: Insofar as it relates to those 20 people that he testified about that have been furloughed, go ahead.

Mr. Renda: All right, Mr. Examiner.

Q. (By Mr. Renda): I direct your attention to a pilot named D. R. Edgerton. You will note he was hired for the first time June 30, 1947. That was subsequent to the hearing in the Route 68 case, is that correct? A. Right.

Q. And he was furloughed September 19, 1947, pursuant to letter of September 4. He was recalled on June 28, 1948, [2120] furloughed again August 31, 1948. Do you question any of that information?

A. No, I don't question it. Neither do I affirm it.

Q. Do you know whether or not he was flying between June 28, 1948, and August 31, 1948?

A. I am pretty sure from—just answering without checking the records, I am pretty sure that he did, yes.

Q. Why was he furloughed August 31, 1948?

A. Because that is the—I would assume that

(Testimony of A. W. Stephenson.)

that is the time that the Yellowstone schedules, summer schedules, were being reduced.

Q. Due to schedule cut-backs, in other words?

A. That is right.

Q. Doesn't that happen every year with Western? In other words, don't winter schedules go into effect varying on the exact date, but some time in the fall, either September or October?

A. It did every year except 1946.

Q. And in 1946 when did winter schedules go into effect?

A. The winter schedules went into effect when winter came, but there was no reduction until November of 1946.

Q. In other words, the period was just 30 days later than had been the practice in other years?

A. Well, what I mean is that Western was putting on schedules in October of 1946 rather than reducing. October and November.

Q. Well, Mr. Stephenson, what happens to pilots when there is a change in schedules at the end of the summer [2121] season and the schedules for the summer season are reduced from those that were in effect previously?

A. The pilots flying reserve—the reserve captains flying temporary runs go back to reserve captain at their bases. Senior pilots go back on the permanent runs and reduce co-pilots, and at the bottom of the list men are laid off, reduced.

Q. Furloughed? A. Furloughed.

Q. Doesn't this cycle occur every year?

(Testimony of A. W. Stephenson.)

A. It did, except for 1946.

Examiner Wrenn: Are those individuals recalled to employment then when the summer schedules are put on again, if they are available?

The Witness: If they are available and needed. It depends on the number—the next season's schedules might be different.

Examiner Wrenn: Oh, I understand that.

Q. (By Mr. Renda): Was not that the same situation that existed in 1947 that brought about the furloughing of the 23 pilots mentioned in the September 4, 1947, letter?

A. Will you repeat the question?

Examiner Wrenn: Read it back to him, please.

(The question was read.)

The Witness: No. It was partially, but not completely.

Q. (By Mr. Renda): Well, now, let's look at Mr. Critchell. You will [2122] notice the pattern there is one of being hired in the spring, furloughed in the fall, recalled in the spring. The same is true of Mr. Edgerton. The same is true of Mr. Fitzgerald; is that correct?

A. Except that he didn't come back.

Q. Well, that was of his own choosing.

Examine Mr. F. J. Flynn and see if you don't have the same pattern there.

A. According to this it has.

Q. Do you question the accuracy of the information?

(Testimony of A. W. Stephenson.)

A. Yes. Mr. Flynn is a case of what I mentioned in 1946. The reason the curtailment was not—the first of December rather than the September and August 31 curtailment.

Q. Yes, but he was recalled in the spring of 1947, furloughed in the fall of 1947, recalled in January of 1948, and was again recalled this year on April 1, 1949. Isn't that the same pattern as exists with respect to the other pilots we have discussed up to this time? A. Yes.

Q. Let's examine Mr. Allen F. Funkey. Is it not true that with Mr. Funkey it is a case of being hired in the spring of 1946, furloughed in the fall of 1946, rehired in the spring of 1947, furloughed in the fall of 1947, recalled in the spring of 1948, furloughed in the fall of 1948?

A. Except that it wasn't the fall. It was in the winter, December 4.

Q. Well, I stand corrected in that respect. December 4. The winter started December [2123] 23d——

Examiner Wrenn: Are these individuals here in this W-R-1, the individuals mentioned in the letter of September 4?

Mr. Renda: Each one.

Examiner Wrenn: Rather than go into each case here, isn't it possible to find out whether Captain Stephenson has any disagreement with the facts set forth here?

I see the pattern of the argument you are making here, and you can make it just as well unless he

(Testimony of A. W. Stephenson.)

disagrees with that, that this is a correct statement of the employment record of those men.

Mr. Bennett: If counsel present a witness who says that this is a true and correct recitation of the employment of these individuals, I don't see how we could dispute it, so then let it be.

Examiner Wrenn: I assume he is going to do so. My only question is who is the appropriate witness in Western to do it, whether someone in the employment office is the proper witness or whether Captain Stephenson is.

Mr. Bennett: That goes to the crux of my first objection, Mr. Wrenn. Mr. Stephenson says he doesn't know. If that is what the record is, so be it, and that is what he has testified to all through this.

Mr. Renda: As I indicated previously, Mr. Examiner, we will have a witness who will sponsor this exhibit and other exhibits. We are not in disagreement in that respect. The questions I have asked Mr. Stephenson up to this time with respect to this information is preliminary from my ascertaining from him as to why these various parties, 23 all told, [2124] mention in Exhibit W-8, which is the September 4, 1947, letter, were furloughed on September 18, 1947, and—as is perhaps obvious by my question so far—why they were furloughed in September and October, 1948, and why in September and October, 1946?

Unless I can ascertain from him first as to whether he has any question as to the information,

(Testimony of A. W. Stephenson.)

I don't see that it would be appropriate to ask him the other questions.

Examiner Wrenn: My question is whether Captain Stephenson has any disagreement with the information. If he is willing to accept it as factually correct, I think we can go ahead.

Mr. Renda: Let me put this question to him, Mr. Examiner.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Mr. Stephenson, set forth in Exhibit W-R-1 is factual information obtained from the payroll records of Western Air Lines dealing with the employment status of the various pilots mentioned in the September 4 letter. Will you be willing to accept that information as correct, subject to check, for the time being?

Mr. Bennett: Are you testifying now? I don't understand.

Examiner Wrenn: He asked a question.

Mr. Renda: I am trying to avoid a question on each and every one of these cases.

Mr. Bennett: If you know.

The Witness: From my brief acquaintance with it, I [2125] would say that it is reasonably accurate. There might be minor errors as to dates or status, but the statement opposite the individual's name apparently is reasonably accurate.

Examiner Wrenn: I want you to be clear on that, Captain Stephenson. You are not sponsoring this, and he is not introducing this through you.

(Testimony of A. W. Stephenson.)

You understand that and he understands that. So go ahead.

Q. (By Mr. Renda): On the basis of your reply to my previous question, I invite your attention to the fact that of the 23 pilots listed in the September 4 letter, and in Exhibit W-R-1, seven of them were hired subsequent to the sale—excuse me—subsequent to the hearing in the sale of the Route 68 case. Is it your position that those pilots were adversely affected by reason of the sale of Route 68?

A. Yes.

Q. What was the nature of their employment, if you know, at the time they were hired subsequent—

A. Co-pilot.

Q. In your opinion, was it temporary?

A. No. It shouldn't have been.

Q. Well, now, I invite your attention to the fact that of the 23 pilots listed 13 were furloughed in the fall of 1946, recalled in the spring of 1947—or some approximate date thereto—furloughed in the fall of 1947 and recalled in the spring of 1948.

Now, there was no sale of Route 68 in the fall of 1946 or the fall of 1948. How do you explain them being furloughed [2126] at those dates?

A. At what dates?

Q. The fall of 1946 and fall of 1948.

A. The fall of 1946, in October, 1946, we were built up to seven round trips over Route 68. We never operated consistently for any length of time at all more than six, but we built up crews, supposedly, and the company advertised for permanent

(Testimony of A. W. Stephenson.)

bids for 21 captains, and necessarily it would take 21 co-pilots to make up the crews. The original bid was for 26 captains, and as our experience on the route developed we were able to reduce the flying time and the figure of 21 crews was finally established as the permanent basis.

Q. Mr. Stephenson, that doesn't answer my question, but——

Mr. Bennett: I submit it does answer the question.

Examiner Wrenn: Let him finish his statement.

Go ahead, Mr. Renda. You started to say something.

Mr. Bennett: Yes, go ahead. I am sorry. I wanted the record to show, though, that in my opinion he answered the question.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Isn't it a fact that pilots were furloughed in September, 1948, and September, 1946, due to the usual schedule cut-backs brought about by the change of schedules?

A. Yes.

Q. Isn't it a fact that that happened in September, 1947? [2127]

A. There were some, yes, but not all of these 23 by any means.

Q. Well, how many?

A. Oh, approximately four or five.

Q. Do you know how many pilots were furloughed in September, 1948?

A. No, I don't, not offhand.

(Testimony of A. W. Stephenson.)

Q. Why were pilots furloughed in September or October, 1946?

A. Discontinuance of Denver schedules.

Q. How many schedules were being operated in September, 1946?

A. Four. I believe the fifth one was put on in September.

Q. How many were operated in October?

A. Six—five.

Q. How many in November?

A. The date at which they were bulletined to be scheduled, and the date on which they actually occurred, there is a variation. But there was actually set up to be seven schedules so far as flight crews were concerned, but the seventh was not operated very long.

Q. Mr. Stephenson, I am not interested in knowing what was set up. I am interested in knowing what was actually operated.

A. Seven, for a period of time.

Q. I invite your attention to A.L.P.A. Exhibit 16. You will note the schedules reported as being operated in 1946. [2128]

Mr. Bennett: Just a minute.

Mr. Wrenn, I am going to object to this as not being proper cross-examination. We have a witness to sponsor Exhibit 16 and he will follow this witness. He may be cross-examined, triple examined, and howsoever examined. This is not proper cross-examination of this witness. We didn't

(Testimony of A. W. Stephenson.)

go into this previously, and I am objecting to this line of cross-examination.

Examiner Wrenn: Well, I am going to overrule your objection there. If it is in that particular exhibit, I am not concerned with that. Maybe Mr. Renda will start over with his general questions. As I understand it, he wants Captain Stephenson to tell us how many schedules you operated at that time, and wherever he gets it I presume that is satisfactory.

Mr. Bennett: All right. He already answered the question once, if I understand.

Examiner Wrenn: What is the state of the record on it?

(The record was read.)

Examiner Wrenn: All right, Mr. Renda.

Mr. Renda: I would like to indicate at this time, Mr. Examiner, that Mr. Stephenson is sponsoring an exhibit at this time that deals with information purported to demonstrate a typical case. I have a right to cross-examine him and ascertain the correct details.

Examiner Wrenn: All right. Proceed.

Q. (By Mr. Renda): Have you compared that with Exhibit 1? A. Yes. [2129]

Q. Do you find how many schedules there are listed in there? A. Yes.

Q. Do you want to correct your previous testimony? A. I do not.

Q. Then please explain.

(Testimony of A. W. Stephenson.)

Mr. Bennett: Then explain what? You mean the difference in his testimony and the exhibit; is that what you mean?

Mr. Renda: The question speaks for itself.

Mr. Bennett: If that is what you mean I object to it. He is not sponsoring that exhibit.

Examiner Wrenn: I sustain your objection on that. He can explain his testimony of seven, what he based it on.

The Witness: Because there could easily be a discrepancy between the figure—this exhibit was based on C.A.B. reports——

Mr. Reilly: It is not based on C.A.B. reports at all. If you look at the bottom of the exhibit it says "Source," and you can see none of those are sources of the C.A.B.

Examiner Wrenn: Go ahead and answer, Captain Stephenson.

The Witness: I stand corrected.

But we operated, or started to operate, the seventh schedule with a schedule number. Crews were qualified and assigned to the runs. In November of 1946 we had an early winter season with a considerable amount of snow and bad weather, and an immediate cut-back was started. And whether that schedule was flown or not, or on the books for more than 15 days, I don't know. I do know of the sixth. But I [2130] know we were prepared and expected to fly seven.

Q. (By Mr. Renda): I repeat, all I want to know is did they fly or did they not fly, and operate

(Testimony of A. W. Stephenson.)

a seventh schedule. I don't care what was on the drawing boards.

A. I repeat my testimony.

Q. And you answer my question?

A. That is my answer to the question.

Examiner Wrenn: Well, were they flown, Captain, or not?

The Witness: They are on the books. Whether they were on the airways' guide, or not, I don't know.

Examiner Wrenn: Do you know whether crews actually took the schedule out and operated it, or not?

The Witness: I would have to check the records on that, sir.

Examiner Wrenn: Your present answer is subject to checking; you couldn't say definitely one way or the other?

The Witness: About the seventh trip.

Examiner Wrenn: All right.

Q. (By Mr. Renda): Going back to September 15, 1947, you are familiar with the decrease in schedules that were made by Western, effective that date?

A. That is right.

Q. Were not all 23 pilots listed in the September 4 letter affected as a result of the schedule reduction?

A. Of September 15?

Q. Yes.

A. No. The original effect was the reduction of [2131] Denver schedules, taking two schedules off Denver in order to operate Route 63 the first of August when that went into operation. And on

(Testimony of A. W. Stephenson.)

August 31 a Yellowstone schedule was taken off. And actually on September 4 we had an excess of pilots—or, rather, on the 15th when the final Denver schedule was dropped was when the reduction was began to be felt by the Los Angeles base.

Q. Now, let us consider the different pilots mentioned in this September 4 letter. Name for me those who were flying Route 68.

A. I can't do that, because in the first place co-pilots in this——

Mr. Bennett: The September 4 letter, you say? I think he is confused. He is looking at——

Examiner Wrenn: Take your time, Captain. Read the question to him again.

(The question was read.)

The Witness: Well, I can add one.

Q. (By Mr. Renda): What is his name?

A. Hongola.

Q. Who else?

A. I couldn't commit myself to any others just now.

Q. Isn't it a fact that pilots were flying on Route 68 after the transfer and continued in their employment, and none of them by reason of their high standing on the seniority list lost any time?

A. No. This Hongola lost time.

Q. How much time did he lose? [2132]

A. Well, he was furloughed—not immediately, but within a very short period.

Q. Do you know how he was on furlough?

Examiner Wrenn: Just a minute, please.

(Testimony of A. W. Stephenson.)

Would you read me the preceding question and answer?

(The record was read.)

Q. (By Mr. Renda): You don't know how long he was off?

A. He is pretty high on this list. I notice he isn't on your list, so he wasn't off very long.

Q. How about the other pilots that are listed in that letter? Where were they flying at the time of the sale of Route 68?

A. Flying on Route 63, Route 63, and Route 13.

Q. Can you identify their status?

A. No, neither could they.

Q. By that, Captain Stephenson, I mean were they co-pilots? A. Yes.

Q. They knew they were co-pilots?

A. But I thought you were talking about routes.

Q. And is it not a fact that their standing on the seniority list, by comparison, was pretty low, wasn't it? A. The bottom of the list.

Q. And they are the same persons who when we have a cut-back in schedules in September of each year would be the first ones to go?

A. Not the first ones. The bottom of the list would be first. [2133]

Q. Well, they were the first ones to go in 1947, weren't they?

A. Well, there are several of them that are not here any more—or some of them.

Q. Can you tell us specifically which pilots of

(Testimony of A. W. Stephenson.)

those mentioned in this letter of September 4 were adversely affected—or to state that differently, which pilots were furloughed for the sole reason that Route 68 was transferred?

A. Well, had Western Air Lines kept Route 68 and operated normally, none of them would have been furloughed.

Q. You mean to say, Captain Stephenson, that no pilot would have been furloughed in the fall of 1947 by reason of any seasonal schedule cut-backs?

A. No, I didn't say that.

Q. Then where is that statement wrong?

A. Mr. Renda, I would like to know what question you want me to answer.

Examiner Wrenn: Read the previous question.

(The record was read.)

The Witness: I mean had Western continued to conduct a normal operation on Route 68, they would have had to have these 23 men on their active pilot list to conduct their operation.

Q. (By Mr. Renda): Well, now, how do you explain the fact that a substantial number of pilots were furloughed in September, 1948, 13 of which are listed in this very letter? [2134]

A. Because Western's operation has been curtailed since July, 1947.

Q. Did Western sell any routes between September 15, 1947, and September 15, 1948?

A. Between September 15, 1947, and——

Q. September 15, 1948.

(Testimony of A. W. Stephenson.)

A. No, not to my knowledge.

Q. It was a normal operation, was it not?

A. Yes, for Western.

Q. How long have you been flying for Western, Mr. Stephenson?

A. For Western and National Parks it will be over 21 years.

Q. Isn't it a fact that you know of your own experience each and every year when there is a decrease in the number of schedules operated which is brought about usually by decline in traffic, that pilots are furloughed?

A. I will answer it this way: That we have summer schedules and—to carry the additional traffic in the summer time. And when that is terminated there is a reduction in the number of pilots.

Examiner Wrenn: Well, you seem to both be agreed that that has taken place in 1946 and in 1948. Now, you are disagreeing about 1947. Let's get that one straightened out. That is what I am particularly interested in.

You, as I understand you, say a certain number of them got furloughed because of that, and I understand that Captain Stephenson—

The Witness: If we had kept Route 68 it would have [2135] taken about 30 or 31 men to fly it.

Examiner Wrenn: There wouldn't have been any cut-backs because of taking off schedules?

The Witness: May I explain how that came about?

Examiner Wrenn: Certainly.

(Testimony of A. W. Stephenson.)

The Witness: Between the time that the original hearing was heard before the Board, while the Board had the case under consideration, Western went from four round trips a day to two round trips a day at Denver. That released seven bid captains, or 14 men, to operate the 63 extension to San Francisco-Seattle. And what happened, you see, sir, is that on, I believe it was July 1, my records show that that was done, and there 14 jobs were lost for Western, or we will say were taken from 68 and put on 63. In the meantime, reduction of summer schedules, one schedule came off of Yellowstone on August 31, and on September 15, or some time between August 31 and September 15 not only did the other Yellowstone schedule come off but two round trips to San Francisco came off on 63, and that reflected in this figure here.

Examiner Wrenn: When you say that, you are referring to that letter of September 4?

The Witness: Yes.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Assume that Route 68 had not been sold and schedules were cut back in September, 1947; isn't it a fact that it would have been necessary to furlough the men that we have referred to? [2136]

A. Absolutely not. We would have had to have these three men, and eight more, to fly 68.

Examiner Wrenn: I don't understand your reference to three men there, Captain Stephenson.

The Witness: Twenty-three men, sir.

(Testimony of A. W. Stephenson.)

Examiner Wrenn: Oh, I misunderstood you.

Q. (By Mr. Renda): You are predicating that on your assumption that normal operation is four round trips, aren't you?

A. My assumption that four round trips are the minimum. The minimum that could do it properly.

Q. Mr. Stephenson, do you know anything about the traffic that is moved between Denver and Los Angeles since the sale of Route 68? A. No.

Q. Isn't it a fact that schedules are geared to volume of traffic? Are you familiar with that?

A. I know an attempt is made to do that. But it is not always a true indication of what the traffic is, the number of schedules.

Q. Is it your testimony that the management of Western has been remiss in that respect?

A. No.

Q. I thought you were implying that.

Mr. Bennett: I object and ask that that be stricken—whatever he may have thought.

Examiner Wrenn: The witness' answer is clear on that. Go ahead. The witness has testified that he isn't making any such allegations. What Mr. Renda thinks is his own [2137] thinking.

Mr. Bennett: But it isn't a part of this record, I would think, is it?

Q. (By Mr. Renda): Let us talk about the seniority list. One's number or position on the seniority list never changes, does it? A. Yes.

Q. What brings about that change?

A. If a pilot leaves the company either volun-

(Testimony of A. W. Stephenson.)

tarily or involuntarily every man on the list from the bottom man up to that man's place on the list changes his number.

Q. Isn't that brought about only by several factors: One, resignation of somebody on the seniority list, and as a result everybody moves up automatically——

Examiner Wrenn: Didn't he just testify that?

The Witness: Yes.

Q. (By Mr. Renda): But it is not the sort of thing that fluctuates every month, is it?

A. Seniority lists are only made up twice a year. You only get a number, normally, twice a year.

Q. On the basis of the application of the seniority principle, the contract, these 23 pilots were furloughed, were they not?

Mr. Bennett: May I hear that question?

Examiner Wrenn: Read the question.

(The question was read.)

The Witness: Yes. [2138]

Q. (By Mr. Renda): There was nothing improper about that? A. No.

Q. Now, let us turn to your Exhibit No. 1, page 2. I direct your attention to Richard M. Kennedy. You state he was furloughed in 1946 and furloughed in 1948.

Excuse me. May I withdraw that question?

Examiner Wrenn: All right.

Q. (By Mr. Renda): Do you know, Mr. Stephenson, that Mr. Kennedy was furloughed December 4, 1946? A. Do I know that?

(Testimony of A. W. Stephenson.)

Q. And then recalled on May 22, 1947?

A. That is right. There is apparently an omission—he omitted a three months' period in the summer, of duty.

Q. Now, do you know why he was furloughed in December, 1946, and was off work until May 22, 1947?

A. I don't know that he was furloughed in 1946.

Q. Assume that that is correct—I will withdraw that, Mr. Examiner.

Examiner Wrenn: All right.

Do you want your previous answer to stand?

Mr. Bennett: Well, if he withdrew the question——

Examiner Wrenn: He withdrew the latter one. He withdrew the latter question.

The Witness: What is it?

Examiner Wrenn: Read the previous question and answer, Mr. Reporter?

(The record was read.)

Examiner Wrenn: Do you want that to [2139] stand?

Mr. Renda: Yes, I am going to follow that up.

Q. (By Mr. Renda): Do you know that following his furlough, September 18, 1947, he was recalled May 7, 1948?

A. Yes. That is his statement in the records that we checked.

Q. Do you know he was again furloughed September 15, 1948?

(Testimony of A. W. Stephenson.)

A. Yes, he should have been, from his place on the list.

Q. Why was he furloughed in September, 1948?

A. I never had a statement from the company as to why.

Q. Isn't it a fact, Mr. Stephenson, that you know why he was furloughed, and it was due to the schedule cut-backs September 15, 1948?

A. If you had asked me the question in that manner, I would have answered it for you. Yes.

Q. Why was he furloughed December 4, 1946? Do you know that?

A. I would assume that it was because of cutting back the sixth and seventh schedules to Denver. The seventh schedule and possibly the sixth.

Q. And there was nothing improper about his being furloughed in December, 1946, was there?

A. No, not to my knowledge, no.

Q. Do you know his status at the present time?

A. No, I don't believe he is with us at all any more.

Q. Has he resigned?

A. I wouldn't know that. [2140]

Q. How do you compute the \$3,160 that you claim was the loss he sustained?

A. I only have the month indicated here on which he was furloughed, and when he was called back, the parts of the month. The result would be the number of months he was off duty by his rate of pay.

(Testimony of A. W. Stephenson.)

Q. Will you please identify the months? The months of what years?

A. Well, as your statement shows, he was furloughed in December, 1946. He came back to work in May of 1947——

Q. You are not claiming a loss for that period, are you, Mr. Stephenson?

A. Well, if the man was off he wouldn't get any pay from Western.

Examiner Wrenn: Do you understand Mr. Renda's question?

The Witness: What?

Mr. Renda: Let me see if I can get this straight.

Q. (By Mr. Renda): Do I understand your testimony to be that in the case of Mr. Kennedy he was adversely affected and sustained a loss in pay for the months of December, 1946, to May, 1947? That is part of what goes to make up \$3,160?

A. No. It might have been his computation as to time lost on that. However, the fact—well, I would have to check through all of his months on duty and one thing and another in order to check that figure to make sure.

Examiner Wrenn: Well, you, yourself, don't count it as a proper item for inclusion, do [2141] you?

The Witness: That might not be. All of it might not be. It might be an error.

Examiner Wrenn: Well, my question is, if he has included the time Mr. Renda mentioned from December, 1946, to May, 1947, in reaching that con-

(Testimony of A. W. Stephenson.)

clusion, you would not say that was the proper time to be included, would you?

The Witness: That is right, it would not. But it might be his computation——

Examiner Wrenn: I understand that.

Mr. Bennett: December, 1946?

The Witness: Yes.

Mr. Bennett: Do you mean in this computation?

The Witness: Yes.

Examiner Wrenn: Go ahead, Mr. Renda.

Q. (By Mr. Renda): So in your opinion, the period December, 1946, to May, 1947, should not be included? A. That is right.

Q. Now, how about the period September 18, 1947, to May 7, 1948? Is that a part of this claim?

A. If we were making an itemized claim for dollars and cents in our petition to the Civil Aeronautics Board, yes.

Q. Do I understand, then, Mr. Stephenson, that with respect to Mr. Kennedy his position would be, or is the same as yours, that he is not making a claim for money damages in this proceeding?

A. That is right. We are not asking for money.

Q. All right. Then I invite your attention to Mr. Chapman, and you will note in the second sentence you state [2142] that prior to the sale of Route 68 he was flying as captain.

Isn't it a fact that his status was that of reserve captain?

A. The term "reserve captain" only has one place. It is in the contract. We only have two

(Testimony of A. W. Stephenson.)

classifications of pilots. We have actually captains and co-pilots. A reserve captain is a co-pilot with seniority enough to fly captains' runs, the surplus time, and so forth. True, he is mentioned in the contract, and quite often discussed, but so far as a bid award from the company, and so far as a statement as to what pilots are assigned where, we only talk about pilots and co-pilots.

Q. Isn't it very important in computing the pay, and pay opportunities of a pilot, as to whether he is a reserve captain or a captain?

A. No, not in the least.

Q. Well, now, isn't a reserve captain subject to being bumped when a captain who has full classification isn't able to get his full flying time in a given month?

A. He is. Yes, he would be if you called him anything.

Q. So there is a difference between a captain and a reserve captain as to what his rights may be?

A. No. The reserve captain is a co-pilot who is qualified, and so forth, and it is true the individual is designated as to who is qualified for that time, but that is completely automatic provided he is qualified for the route and the equipment.

Q. Well, let's get it down to cases. Take a captain [2143] that is flying DC-3 equipment on the run between Los Angeles and Salt Lake City, permanent run, flying pursuant to permanent bid, and compare that with the reserve captain who is flying on that same run with the same type of equipment.

(Testimony of A. W. Stephenson.)

Isn't it a fact that the reserve captain is subject to being bumped by a permanent captain, whereas that is not the case with the permanent captain?

A. On Salt Lake City the first reserve captain would have enough flight time—guaranteed enough flight time during the month that he would be sure of his 85 hours.

Examiner Wrenn: Well, let's put it on any other route Western has, and the same set of circumstances. What would be your answer there?

The Witness: May I have the question again, please?

Examiner Wrenn: Well, all I want to know, and what I am trying to find out, is what is the distinction of a permanent captain bidding on a run and a reserve captain?

The Witness: There is that distinction, that a permanent captain can bump a reserve captain.

Q. (By Mr. Renda): So that for pay classification, am I correct that Mr. Chapman, prior to the sale of Route 68, held the status of a reserve captain and not a captain, as we understand it, as was just discussed?

A. That has nothing to do with his statement. He said he was flying——

Q. I don't question that, Mr. Stephenson. It is just important that I establish the truth of this statement. Was he a captain or a reserve [2144] captain?

A. I believe he was a reserve captain.

Q. All right, thank you.

(Testimony of A. W. Stephenson.)

All right, let's turn to No. 10, Mr. J. T. Keller.

About six lines down from the beginning of the paragraph with regard to Mr. Keller, you state that between January and September, 1947, he was required to fly as captain on DC-4 and DC-3 equipment on Route 63 and Route 13 with a resultant loss of pay in the approximate sum of \$1,080.

Well, now, inasmuch as the transfer of Route 63 came about in the middle of September, why do you make any claim for Mr. Keller in any of the months preceding September?

A. Because Mr. Keller was awarded a permanent run on Route 68, in the autumn months of 1946. Under the terms of our contract—he expected that to be a permanent run; the company said it was. Under the terms of the contract he could continue to hold rights to that route for six months after that trip was no longer flown—to return to it. In other words, the 1946 winter schedules were taken off at Denver and never put back on.

Q. Well, now, that was just a normal happening in the business, was it not, the change in schedules?

A. To take them off, but it is usual to put them back on.

Q. I understand that in your opinion once a company has put certain schedules into operation, whether they prove profitable or not they ought to continue so the pilots will have something to fly?

A. Whether they prove profitable?

Q. Yes. [2145]

(Testimony of A. W. Stephenson.)

A. No. They are perfectly justified in not continuing them if they are not profitable.

Q. So that the change in schedules is a normal thing in the business, is it not?

A. It is, that is right. That is what I mean in this case, that the winter reduction and putting them back on in the spring is normal. And from what we understood from our experience that should have held true with Route 68.

Examiner Wrenn: Had the time in which he had a right to go back to Route 68 elapsed before the time this route was approved for transfer, or not?

The Witness: It had elapsed before it was approved, while it was at hearing and being considered by the Board.

Examiner Wrenn: Well, if it had elapsed and he hadn't gotten back on there, how could he be damaged by the transfer? I am interested in getting your thinking on it.

The Witness: In October, 1946, Western Air Lines had six roundtrips to Denver, which they considered a normal operation. They took off six or seven—whatever it was that they reduced, reduced it to four during the winter months. Route 68 is the only route they have that they did not put back to summer operation in the spring, and they never did that. They did it on every other route. Every other route did show an increase in the spring, and that was not done on Route 68.

Examiner Wrenn: Go ahead.

(Testimony of A. W. Stephenson.)

Q. (By Mr. Renda): Mr. Stephenson, in this paragraph you also state that after the sale of Route 68, and in September of 1947, [2146] he was demoted permanently to flying captain on DC-3 equipment on Route 13.

Now, do you know that in response to a bid invitation issued in May, 1947, for permanent run captain vacancies on Route 13, that Mr. Keller submitted a voluntary bid?

A. What was the date of the bid?

Q. May 17, 1947, bid invitation.

A. Yes, I think he did.

Q. Do you know that he was one of the successful bidders?

A. He was.

Q. And he was advised of his new assignment on June 1, 1947, to fly as captain on Route 13?

A. That is right.

Q. Is that inconsistent with your representation here, that after the sale of Route 68 he was demoted and was required to fly elsewhere?

A. On May 7, 1947, he held a permanent run on Route 68. Whether he was flying it or not. And that was flying DC-4 airplanes. And he finally—this bid of May 17, 1947, only held good until October.

Q. Well, now, in May of 1947, at least May 7, surely no one knew whether the Board was going to approve or disapprove of the sale of Route 68. Now, isn't it a fact that this man voluntarily of his own choosing submitted a bid for the right to fly as captain of DC-3 aircraft on Route 13?

(Testimony of A. W. Stephenson.)

A. Sure. If he submitted a bid he was not coerced.

Q. Then if that is the case what difference does it make with respect to this man that Route 68's sale was [2147] approved and the route was transferred?

A. It makes this difference; he did not know what was going to happen to Route 68, but the company had not restored his run on Route 68 and already had petitioned the Board to sell the route. And, furthermore, in line with the thinking of all air line pilots that the pilots go with the route, Mr. Keller no doubt felt he didn't want to go, and if he was assigned 13, flying there, he would in that way indicate that he didn't want to go.

Q. Well, now, you are not indicating that this man has a claim for being adversely affected where he has made a change in his status by reason of his own action prior to the sale of this Route 68?

A. I am. The Route 68 sale was in progress at that time. The contract had been written.

Examiner Wrenn: What you are saying in substance is that he saw something in the offing and he preferred to have a bird in the hand rather than two in the bush—something of that kind.

The Witness: That is right, sir.

Examiner Wrenn: Is the Air Line Pilots union contending that if the condition you seek, namely, that if the pilots on Route 68 were to be transferred with the route, that Captain Keller will be one of those transfers?

The Witness: No, sir.

(Testimony of A. W. Stephenson.)

Q. (By Mr. Renda): Under those circumstances, will you please point out how Mr. Keller was affected by the sale of Route 68 and after his transfer, when the change in his status [2148] occurred prior to the sale?

A. It didn't occur prior to the time the sale was announced. That was May 7th, before the summer schedules were due to be put on.

Q. Well, now, let me get that straight. Is it your position, and the position of these men for whom apparently you are speaking, that they were adversely affected starting from the time the sale was announced, without any regard as to the sale finally being approved by the Board?

A. That is right.

Examiner Wrenn: Is this a good place to stop for a few minutes?

Mr. Renda: Yes, Mr. Examiner.

Examiner Wrenn: All right, we will take a five-minute recess.

(There was a short recess taken.)

Examiner Wrenn: All right, gentlemen, let us proceed. Continue with the cross-examination of the witness, Mr. Renda.

Q. (By Mr. Renda): Mr. Stephenson, I direct your attention to paragraph 11 of Exhibit 1, which deals with Mr. Dick Young.

Mr. Young didn't lose any time, did he, as the result of the sale of Route 68?

A. He continued on the payroll, yes.

(Testimony of A. W. Stephenson.)

Q. Well, he wasn't furloughed, was he?

A. No.

Q. All right.

Now, you will note half way down that paragraph you [2149] state that he was then required to fly as captain on DC-4 and DC-3 equipment on Western's Routes 63 and 13, and so forth. And you further state that after the sale of Route 68 he was demoted to co-pilot flying DC-3 equipment.

Did you know that Mr. Dick Young, in response to Bulletin dated May 7, 1947, publishing 13 permanent run captain vacancies on Route 13, flying DC-3 equipment, submitted his voluntary bid?

A. Yes, I think he did.

Q. Did you know that on June 2 he was advised effective June 1, 1947, he was one of the successful bidders assigned to Route 13?

A. That is right.

Q. And this happened before the approval and the ultimate transfer of Route 68?

A. That is right.

Q. Is there any question with respect to a man submitting a bid on an invitation such as this May 7, 1947, invitation that I have mentioned—it is his own choosing completely, isn't it? He doesn't have to bid.

A. It is his own choosing. It helps him to decide and indicates to him what possibilities he has to fly what equipment over what route.

Q. Now, you turn over to paragraph 13, Robert S. Conover. Did you know that Mr. Conover sub-

(Testimony of A. W. Stephenson.)

mitted a voluntary bid to bulletin dated May 7, 1947, with respect to permanent-run captains on DC-3—DC-4 equipment on Route 13?

A. Before I answer, I would like to have a copy of that bulletin. If you don't have one, I have one and I would [2150] like to get it out. If you are going to run down that list.

Q. That is perfectly all right. I only have this one copy, but you may look at it if you care to.

A. What was the date of that?

Q. Of the bulletin? A. Yes.

Q. The date of the bulletin inviting bids is May 7, 1947. The date of the letter to all pilots announcing the successful bidders is dated June 2, 1947.

A. That is right.

Q. Do I understand you to say that Mr. Conover was one of the pilots who bid for a permanent-run captain's vacancy on Route 13, and was successful? A. That is right.

Q. And that bid was submitted in May of 1947, subsequent to May 7 and before June 2?

A. That is right.

Q. All right. Turn to paragraph 14, where Mr. H. H. Bailey is mentioned. I ask you if the same isn't true of Mr. Bailey, what we have just indicated with respect to Mr. Conover, namely, that Mr. Bailey submitted a bid for permanent-run captain's vacancy on Route 13, and he was successful as of June 1, 1947? A. That is right.

Q. And turn to paragraph 18, Mr. Edward Schuster, wherein you state that after the sale of

(Testimony of A. W. Stephenson.)

Route 68, and in September, 1947, he lost his permanent captain's status and was required to fly as captain on DC-3 equipment on Route 13. That is not correct, is it? [2151]

A. It is correct. He lost his permanent captain's status on DC-4's.

Q. Now, isn't it a fact that he also bid for a permanent-run captain's vacancy on DC-3 equipment on Rule 13 on May 7, 1947? A. That is right.

Q. So that the transfer was of his own choosing, was it not?

A. There was no transfer. He was already off the route. He was not flying 68 at the time he bid. Neither were any of these men mentioned.

Q. All right. When was the last date that Mr. Schuster flew on Route 68?

A. He made trips up until the time it was sold, occasional trips.

Q. At the same time as he held a permanent run as captain on Route 68, he submitted a bid in response to this invitation of May 7, for permanent-route captaincy on Route 13 DC-3 equipment?

A. That is right, but that does not indicate, and I do not intend for this Examiner to understand that that is what he did, fly that route continuously, Route 13.

If I might explain, these men that we have mentioned here were in the status that they had permanent runs, or most of them had permanent runs—perhaps not on Denver, but they flew the reserve time on Denver.

(Testimony of A. W. Stephenson.)

Here is what happens; and was true on Western Air Lines. I don't know how it is on others. Only 85 to 90 per cent of the scheduled time is bid and permanently assigned to [2152] permanent captains on each route. As a matter of fact, United only bids 70 per cent of the permanent time. Then the balance from 10 to 30 is temporary time. So based in Los Angeles, Western Air Lines, when they started operating Route 68, worked on the theory that they wanted as many senior men as possible qualified on DC-4 equipment, and to bid permanent DC-4 runs. And naturally the DC-3 runs they wanted them bid, too. So what would happen with a pilot in the category of being qualified and having seniority enough to fly a DC-4, he would and could, under the contract, and the policy, bid and hold a DC-3 run out of the base, yet he most of the time his flying was as reserve captain in the block above him with DC-4 time, because it was more pay.

Now, what happened, the reason why these men flew trips to Denver was because it was reserve time and Route 63 had DC-4 equipment operating to San Francisco, and DC-4 equipment on 68. Within the contract they had a perfect right to displace, as you mentioned before, a permanent captain had a right to displace a reserve captain on any route on which he is qualified. That is why Mr. Schuster—or why some of these individuals were flying, and entitled to fly under the contract DC-4 schedules to Denver up until the time it was sold.

Q. But that still doesn't change the fact that

(Testimony of A. W. Stephenson.)

these men of their own free will submitted a bid to fly Route 13 permanently in the status of captain, DC-3 equipment.

A. They were not required to fly it permanently, even though they had a bid. [2153]

Q. Well, then, is it a case of one of the evils of seniority rights where a man who is in that position can hold on to some of the more lucrative routes and still at the same time in the event something adverse were to happen be able to jump over on another route? Would you call this kind of a case?

A. I wouldn't call it evils. I would say it is the rights that seniority gives him.

Q. So that if a fellow doesn't have that seniority in order to accomplish this—I mean, it is one of the disadvantages that the seniority creates?

A. Seniority is——

Q. Well, just answer the question “yes” or “no.”

A. Would you repeat the question, please?

Examiner Wrenn: Read the question.

(The question was read.)

The Witness: I deny that it is a disadvantage.

Q. (By Mr. Renda): All right. Now, will you turn to paragraph 15, Mr. Herbert H. Jordan. You indicate that Mr. Jordan was continually in the employ of Western Air Lines as a pilot since on or about July 13, 1946, except during periods of furlough.

Did you know that he was furloughed September, 1946, and recalled May 26, 1947?

(Testimony of A. W. Stephenson.)

A. It doesn't state here. I assume that date is proper.

Q. And did you know that following his furlough September 18, 1947, he was again recalled May 1, 1948?

A. He says June. What do you mean by recalled? The [2154] day he reported or the date he was notified?

Q. The date he went on the payroll, May 1, 1948.

A. That is only information that the payroll department has. I don't have it.

Q. Do you know that he was furloughed September 18, 1948? A. That is right.

Q. Do you know that he was offered reemployment on March 30, 1949, and he failed to accept?

A. I know that he was called to active duty in the United States Air Force on the Air Lift, and exercised his right under the Selective Service Act to take three years' military service, so he had a job.

Mr. Renda: Mr. Examiner, I am not going to move that that be stricken, but obviously it is not responsive to the question. I hope we are not going to get into any flag waving here.

Examiner Wrenn: Read the question for me, Mr. Reporter.

(The question and answer were read.)

Mr. Bennett: I submit it is a responsive answer, because Mr. Renda's question might indicate that the answer is "No," and that is not a proper an-

(Testimony of A. W. Stephenson.)

swer. I will submit that the answer is proper, and I will take out the flag waving.

Examiner Wrenn: Read me the answer.

(The answer was read.)

Q. (By Mr. Renda): So that you don't know that his employment was terminated? [2155]

A. I know the law, and I know that he cannot be.

Examiner Wrenn: When was he called to active service?

The Witness: About the first of the year, sir.

Examiner Wrenn: 1949?

The Witness: Yes.

Examiner Wrenn: All right, proceed.

Q. (By Mr. Renda): Do you know why he was furloughed December 4, 1946, and remained on furlough until May 26, 1947?

A. From December 4, 1946, to May 26, 1947, yes. Reduction in winter schedules.

Q. I presume you would not make any claim for his loss of time for that period, for this man?

A. If there is any understanding that in estimating these amounts of money any of these men are asking for dollars and cents, I wish to make it clearly understood to the Examiner, and all the parties, that this is not compiled or set up in any way to be a claim for money. Because if we were to do that, we would certainly go into the minute details and the accurate accounting. These are nothing but estimated figures to show that a man was off the payroll, that he lost money—so much.

(Testimony of A. W. Stephenson.)

We have never at any time contended this is a figure that we were asking Western to pay somebody.

Q. I appreciate that. But we are building up a record here and it is sometimes important that these things be asked in order that there be no misunderstanding in the record.

Now, you will note that Mr. Jordan was recalled May 1, 1948, and furloughed September 18, [2156] 1948.

A. That is right.

Q. Do you know why he was furloughed September 18, 1948?

A. The statement in Exhibit 1, schedule reductions, is reasonable.

Q. Very well. Now, let us turn to paragraph 17, Mr. Westcot B. Stone. Here again you indicate that Mr. Stone was continually in the employ of Western Air Lines as a pilot since on or about July 1, 1946, except when furloughed. And in this case also do you know that he was furloughed December 4, 1946; recalled May 18, 1947?

A. He states that.

Q. Well, he doesn't state the dates.

A. Well, in trying to reduce this down we didn't go into minute details.

Q. Well, do you question the fact that he was furloughed December, 1946, and recalled in May, 1947?

A. He stated it in this exhibit.

Q. What was the reason for that furlough, if you know? Was it the same as in the case of Mr. Jordan?

A. Yes.

(Testimony of A. W. Stephenson.)

Q. Schedule cut-backs?

A. Schedule cut-backs or flying cut-backs. Incidentally, on this whole group, in your exhibit some of the cut-backs, as explained by you, is Convair training, and completion of that. Now——

Q. I don't want you to testify on my exhibit now. You are not going to sponsor my exhibit, Mr. Stephenson. Just answer my questions, that [2157] is all.

Mr. Bennett: I think he has a right, aside from the exhibit, to explain why he has been asked the question, and——

Mr. Renda: Counsel can take him on redirect at the proper time.

Examiner Wrenn: He doesn't know why he has been asked.

Mr. Bennett: No, but the reason for the cut-back. I think he has a right to answer that question, not from the exhibit, though.

Examiner Wrenn: He can answer that.

Mr. Bennett: If he has anything further to add, I think he can do so.

The Witness: The reasons given for furloughing the first five out of the first six of these men in 1948, was because of the completion of Convair training.

Mr. Renda: Now, let me interrupt, Mr. Examiner. I don't mind this qualifying, but I am not questioning him with respect to that particular thing. I am talking about Mr. Stone. If counsel for A.L.P.A. wants to bring out on redirect, he has the privilege of doing so.

(Testimony of A. W. Stephenson.)

Mr. Bennett: Well, confine your answers to Mr. Stone. If there was any reason why he was furloughed in 1948 that you know of, you should answer.

Q. (By Mr. Renda): The question, Mr. Stephenson, is with respect to Mr. Stone. Do you know that he was recalled May 1, 1948, furloughed again September 21, 1948, and I ask you if you know why he was furloughed in September, 1948? [2158]

A. His statement of schedule curtailment sounds reasonable.

Q. The same as Mr. Jordan, and some of the other boys? A. Yes.

Q. Do you know that Mr. Stone was recalled on March 29, 1949, and is still in the employ of the air line? A. That is correct.

Q. Now, with respect to Mr. George M. Ryan, Mr. Fred W. Wahl, Mr. Floyd L. Aker, who are set forth in paragraphs 19, 20, and 21, none of these gentlemen lost any time, did they, Mr. Stephenson?

A. No. They lost no time. They did lose money.

Q. And that loss in money that you claim was brought about by the shifting of their position on the seniority list.

A. They weren't shifted on the seniority list. Their place on the seniority list shifted with respect to flying so that they couldn't qualify for a permanent DC-4 run.

Q. Just one or two more questions, Mr. Stephenson. The pay computation which you made on the first page of Exhibit No. 1, DC-4 captain, \$1,035,

(Testimony of A. W. Stephenson.)

that is on the basis of how many flying hours?
Eighty? A. Eighty.

Q. Eighty flying hours. Although under the contract the maximum contract that you can schedule a pilot is 85 hours, is it your experience that generally one never reaches more than about 80 hours?

A. As a general rule, a group of pilots will average from 79 to 81 hours per month. It depends on the route and [2159] the type of schedules operated.

Q. And that was also true on Route 68, was it not? Pilots averaged around 80 hours?

A. No. In checking over the—I believe the check was made when we were operating only four round-trips, and in the summer months it is possible, if the normal route length—and there are a good many non-stop schedules—it is possible to average 82 or 83 hours. By the same token, if there are a lot of stops on the route, it is difficult to get up to the 80 hours, because the unknown quantity of holding procedures for instrument approaches, and that sort of thing, has to be considered in the beginning of the month when the pilots are scheduled.

Q. Now, assume that Western had not been extended north of San Francisco, that is, from San Francisco to Seattle, and assume that Western had continued to operate Route 68 with the number of schedules it was flying in September and August of 1947. Do you still maintain, Mr. Stephenson, that it would not have been necessary by reason of cut-backs on seasonal schedules at that time to have furloughed either or a substantial number of the 23

(Testimony of A. W. Stephenson.)

pilots as set forth in the letter of September 4, 1947?

Mr. Bennett: Just a minute before that question is answered.

I would like to interpose an objection.

Examiner Wrenn: All right.

Mr. Bennett: My objection is this: The issue in this case is not whether pilots on Western Air Lines were damaged notwithstanding the ordinary expansion of an air line, notwithstanding [2160] that the route to Seattle was extended. I think the issue in this case is whether or not—and I think it is stated clearly in the Board's order—whether or not the Western pilots were damaged by reason of the sale of Route 68. Aside from the fact that this question which has just been posed, which is a hypothetical question and may not contain all the elements that are necessary for it, it is not an issue in this case and I object to it for that reason.

Mr. Reilly: I don't understand the objection.

Mr. Bennett: Who is it speaking?

Mr. Reilly: Mr. Reilly, counsel for United Air Lines.

Examiner Wrenn: Mr. Renda.

Mr. Renda: I think we all know what the issues in this case are. They are set out and are simple. There has been considerable evidence in this proceeding showing what has happened in 1947 and 1948, and we have not been able to develop too much evidence with respect to this particular witness as to just what happened in 1947. All that we are asking

(Testimony of A. W. Stephenson.)

this witness is if the situation in 1946 had maintained status quo back in 1947, what would have happened in 1947. I think the question is entirely proper.

Examiner Wrenn: You and this witness have been arguing back and forth as to whether part of these crews were furloughed as part of the season's cut-back, and I am perfectly willing to have you go ahead and get the witness' answers on that point.

Mr. Renda: I wonder if we can have the question read to the witness and see if he understands it. [2161]

Examiner Wrenn: I don't see what that has to do with it. I don't see what, assuming that nothing had been done, and so forth, has to do with it.

Mr. Renda: Well, because if Route 68 had not been transferred then the question arises as to whether or not there would have been any pilots furloughed at that time by reason of the time that there were seasonal schedule cut-backs. That became effective on the same day, coincidentally, on the same day as the transfer of the route.

Mr. Bennett: Why not ask him that?

Examiner Wrenn: Yes. I have no objection to that.

Mr. Bennett: Neither have I.

Mr. Renda: I have asked him the question a number of times, and I have asked the witness the question which made the assumption that Route 68's sale had not been approved, and no transfer was made, and that no route had been extended

(Testimony of A. W. Stephenson.)

north of San Francisco. So we are talking about the same routes, same mileage, and the same pilots Western had previous to 1947.

Examiner Wrenn: You are asking if the situation in 1946 had continued on whether there would have been a cut-back, or not?

Mr. Renda: Yes.

Examiner Wrenn: Go ahead and answer that.

The Witness: The question assumes that I have said to this Examiner that the cut-back of pilots in August and September was predicated upon the sale of Route 68 and the non-operation of Route 63, which assumption is not correct.

Mr. Renda: Well, Mr. Examiner, this is just the sort of [2162] difficulty I anticipated once I was forced to more or less change my hypothetical question.

I want to put to this witness a hypothetical question, and I think I have a right to do it, and he can answer, or not.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): My hypothetical question asked you to assume, point No. 1: That Route 68 had not been transferred as of September 15, 1947—Western Air Lines instead of United Air Lines was still flying Route 68. Point No. 2: That at the same time Western had not been extended from San Francisco to Seattle, and therefore was only operating on the Coast from San Diego to San Francisco. Point No. 3: That the same seasonal schedule cut-backs were made on September 15, 1947, as were actually made.

(Testimony of A. W. Stephenson.)

Under those circumstances, I asked you, Captain, would any pilot in this group here have been furloughed?

A. If we had been continuing to operate Denver, no.

Examiner Wrenn: That is the answer you made previously isn't it?

Mr. Bennett: Yes.

Examiner Wrenn: I was wondering if his position is the same on that.

Mr. Bennett: Yes, it is.

Examiner Wrenn: All right.

Q. (By Mr. Renda): You recognize that is identically the same situation that existed in 1946 and 1948, and would still result [2163] in furloughing of pilots.

A. No, I do not recognize that as the same situation.

Mr. Renda: No further cross.

Examiner Wrenn: Mr. Reilly, you may cross-examine.

Q. (By Mr. Reilly): Mr. Stephenson, you say you are not interested in monetary rewards which might accrue to you if the Board would attach a condition to this order of approval; isn't that correct?

A. That is right. That is, from either Western or United Air Lines.

Q. What are you interested in, then?

A. Interested in the principle and policy that we in the Air Pilots Association and pilots understand,

(Testimony of A. W. Stephenson.)

we know has always been carried out, that the pilots go with the routes.

Q. Let me ask you a question on that, now. You said in answer to a question, all the air line pilots agree that the pilots should go along with the route. On what do you base that information? You mean that because A.L.P.A. in convention passed a resolution, is that what you mean?

A. No. That is one reason, and another one is because that is what has always occurred.

Q. Did United pilots go along? Did they vote against this resolution?

A. Not against the resolution, original one, no.

Q. Did they vote against the resolution that is before this Board? A. No.

Q. What did they vote against? [2164]

A. They voted for it.

Q. They were in favor of it? A. Yes.

Q. Isn't your interest here, that you would fly Honolulu? A. No.

Q. You are not interested in transferring to United? What benefits would you get by going to United?

A. My first interest in this thing is this——

Q. I asked you what benefits you would get out of it personally, if United were ordered to take you?

A. I would get to fly a DC-6 somewhere.

Q. And then what? What would happen if a vacancy would occur on the Honolulu run?

A. I would have a chance to bid on it.

Q. Where do you stand on the seniority list if

(Testimony of A. W. Stephenson.)

they dovetailed numbers in United and Western?

A. The United boys have informed me there are about 22 on the list.

Q. Pretty good, isn't it? A. Yes.

Q. You would be flying Honolulu, wouldn't you?

A. I haven't said I would.

Q. How many crews did you say it would take to fly one DC-4? A. Where?

Q. Los Angeles-Denver. A. Two men.

Q. What was this seven you were talking [2165] about?

Mr. Bennett: Two?

The Witness: He asked me what it took to fly a DC-4 from Los Angeles to——

Q. (By Mr. Reilly): How many pilots per airplane are assigned on the route? You know what I am asking you.

Mr. Bennett: I object to this sneering way you asked him that question.

Examiner Wrenn: Answer the question.

Q. (By Mr. Reilly): You said they needed seven men per——

Examiner Wrenn: Just a minute, Mr. Reilly. Let him answer the pending question.

Mr. Reilly: I want to be sure he understands my question.

Q. (By Mr. Reilly): How many men would it take Honolulu to San Francisco, bearing in mind the greater distance?

A. I don't know what United's crew scheme is at all on DC-6's.

(Testimony of A. W. Stephenson.)

Q. Suppose they got Los Angeles-Honolulu? You are familiar with that application, aren't you?

A. I have heard they have one. I would like to answer your question——

Q. I would sure like you to.

A. Are you talking about the total complement of men to operate the trip continuously?

Q. Exactly. A. One schedule? [2166]

Q. No—yes, one schedule, that is enough.

A. I couldn't answer that, then.

Q. Let me ask you something about this qualifying time over on Route 63. Is it a fact that you were still flying Route 68 when you were qualifying on Route 63, flying qualifying time on Route 63?

A. Part of it.

Q. And the most time that you could not have been qualified would be approximately five or six days; isn't that right? A. For what?

Q. September 15—when did you go on Route 63?

A. About the 23d of September.

Q. So that the most would be about seven or eight days; is that right? A. That is right.

Q. And under your contract with the A.L.P.A. you were not entitled to qualify with pay?

A. That is right.

Q. Why did you make a claim for qualifying time?

A. Because I had to fly a plane for Western Air Lines for which I wasn't paid.

Q. But that was under your contract. You wanted your contract, didn't you?

(Testimony of A. W. Stephenson.)

A. Yes, but I could have ridden as a passenger over a portion of it, and I was denied the right of making up that time in gainful flying.

Q. What went into this \$175?

A. Twenty-one hours of flying. [2167]

Q. On what days? Between September 23 or September 15 to the 23rd? A. Yes, I think so.

Q. Those five or eight days, whatever they might be? A. Yes.

Q. And United's pilots were flying over Western's routes to qualify at the same time.

A. They had already qualified.

Q. Well, they were still flying on that route for time, weren't they? Weren't they in the jump seat, some of them?

A. Not with us. We weren't flying them.

Q. Up to September 15?

A. Not after September 15.

Q. I said up to September 15. If I didn't, I am sorry.

Now, these seven schedules, when were they operated between Los Angeles and Denver?

A. They were set up to operate in November.

Q. November what? A. 1946.

Q. Were they or were they not operated?

A. I don't know whether the seventh was ever—whether it operated as a trip number on that, or not. I know it was set up and we were designated to fly it.

Q. Were five and six operated? A. Yes.

(Testimony of A. W. Stephenson.)

Q. And you know there were six daily trip schedules? A. Yes. [2168]

Q. Seven days a week? A. Yes.

Q. How was the traffic, do you recall that?

A. In November it wasn't very good.

Q. But they put on the seventh schedule nonetheless, didn't they?

Examiner Wrenn: Is that a question or a statement?

Mr. Reilly: That is a question.

The Witness: What is it?

Q. (By Mr. Reilly): You said the traffic wasn't very good, and I asked you if despite that they put on the seventh schedule.

A. The seventh schedule had been planned several months ago.

Q. And yet they put it on even though they knew traffic was bad?

A. Yes, and they took it off very shortly, too.

Q. But it was operated?

A. As I say, I am not sure how much was done with that schedule. But I know from the pilots' standpoint it was there.

Q. Let me ask you a couple of more questions about you: Have your working conditions been adversely affected by going over to Route 63?

A. Yes.

Q. How?

A. On Route 68 I could fly a non-stop night trip, or a non-stop day trip, which is a much nicer trip to fly than one that makes several stops. [2169]

(Testimony of A. W. Stephenson.)

Q. That is what you consider being adversely affected?

A. That is one of the things, yes.

Q. What other.

A. A difference in pay, for one thing.

Q. You would get less pay for the non-stop, wouldn't you, for the hours flown?

A. It is the same pay regardless of whether it is a non-stop, for the hours flown.

Q. It doesn't take as long, does it?

A. Well, you can make more trips.

Q. You can? A. Yes.

Q. Did you? A. Yes.

Q. You made more per day, I guess. Is that the position of you or your association, that the more trips you make the better working conditions you have?

Mr. Bennett: Just a minute. That is not in issue here.

Mr. Reilly: I asked him a question. If you don't want him to answer it, it is all right with me.

Mr. Bennett: I object to the question.

Examiner Wrenn: All right, I will sustain the objection.

Mr. Reilly: Mr. Examiner, as I understand it, if the Air Line Pilots Association has any evidence contrary to the exhibit that has been just discussed about, the rebuttal exhibit of Western, they will produce it, otherwise the exhibit will be considered as accurate. [2170]

Mr. Bennett: You mean you want me to stipulate that it goes into the record as being perfect?

(Testimony of A. W. Stephenson.)

Mr. Reilly: Unless contrary evidence is presented before that time, yes.

Mr. Bennett: If Mr. Renda presents his exhibit, and I do not see fit to object to that at that time, and Mr. Renda's exhibit is received into the record, that will be all right with me.

Mr. Reilly: That is all right with me, too.

Mr. Kennedy: It will be subject to whatever defects are shown on cross-examination.

Mr. Reilly: All right.

Mr. Bennett: Then what does your statement mean?

Mr. Reilly: Well, let the record speak for that. We don't need to argue about that.

Examiner Wrenn: Have you any further questions, Mr. Reilly?

Mr. Reilly: Yes.

Q. (By Mr. Reilly): Can you tell me why the resolution was adopted after a hearing in this case?

A. A resolution like that can only be adopted by the A.L.P.A. board, or executive meeting.

Q. And that was the first one held after the filing of the application? A. Yes.

Q. The application was made May 22 and the meeting was held May 24, 1947. A. Yes.

Mr. Bennett: I think the hearing was held May 20.

Mr. Reilly: The hearing was concluded May 22, the C.A.B. hearing. The other I am talking about is May 24, the A.L.P.A. convention in Chicago—what do you call it, executive board or convention?

(Testimony of A. W. Stephenson.)

The Witness: Executive board, that meeting was.

Q. (By Mr. Reilly): Does that resolution, as adopted by the executive board, mean that in the event that the C.A.B. will not condition that all pilots will go, that there will be no transaction with the route; there can be no compromise?

Mr. Bennett: I think the resolution will speak for itself.

Mr. Reilly: I think the Board is very much interested in what they can do in this proceeding, if there comes a time when maybe one pilot or two pilots have been hurt.

Examiner Wrenn: The question is proper. Now, the only question in my mind is whether this is the correct witness.

Mr. Bennett: I withdraw my objection, and I might state for the edification of Mr. Reilly, and the Examiner, that at the end of this hearing we will clarify both the Western and United pilots' position regarding the fact that is now before us. But I withdraw my objection.

Mr. Reilly: That isn't the purpose of my question.

Examiner Wrenn: Go ahead and answer the question.

Q. (By Mr. Reilly): What I want to know is whether or not the adoption of this resolution precludes the disposition of this case any other way, in the event the Board finds that certain pilots [2172] have been adversely affected by this transaction?

(Testimony of A. W. Stephenson.)

Mr. Bennett: Do you understand the question?

The Witness: I would say that the resolution, we don't expect that the resolution has any binding effect on the companies. It is a statement of A.L.P.A. policy to be a guide for us and a statement of our position to the Civil Aeronautics Board, or any other authority.

Examiner Wrenn: Yes, but I don't think that is quite the answer to what Mr. Reilly asked you, Captain.

Read the question.

(The question was read.)

The Witness: The answer is "Yes."

Q. (By Mr. Reilly): Would you accept the Burlington formula?

A. I can't speak for the Air Pilots Association, or its groups.

Q. You are its witness here today.

A. Well, I would say no, if I were——

Q. As I understand your testimony, Captain, Exhibit 1, of which the last page has the estimated financial or monetary loss to certain-named captains or co-pilots, is being presented only to show that there has been a monetary financial loss to those described people.

A. That is right.

Q. It is not being presented, as I understand it, as a claim against Western or United?

A. That is right.

Q. And it is not being presented in the hope that the Board might award or suggest, or direct, or order Western or [2173] United to recompense the

(Testimony of A. W. Stephenson.)

named persons for the amounts estimated set opposite their names? A. That is right.

Mr. Reilly: That is all.

Examiner Wrenn: Mr. Kennedy, you may examine the witness.

Q. (By Mr. Kennedy): Mr. Stephenson, as I understand it, this resolution about which Mr. Reilly has been questioning you was adopted by the Air Line Pilots Executive Board on May 27, 1947? A. That is correct.

Q. Was that ever considered in an Air Line Pilots Association convention subsequent to the meeting of the executive board?

A. I have no direct knowledge of what convention considered it, but I am sure that it has been considered in a recent convention.

Q. It has come up in a recent convention—were you present at such convention? A. No.

Q. Were you a member of the executive board of the Air Line Pilots Association at the time this resolution was adopted? A. No.

Q. Are you prepared to tell us just how the executive board of the Air Line Pilots Association is set up?

A. It is set up in this manner: A pilot and co-pilot representative from every air line is represented on that [2174] board—every air line that is affiliated whose pilots are members of the Association.

Q. So the Western Air Lines' council had a pilot and co-pilot represented, and United Air Lines, and American Overseas, and Inland, and

(Testimony of A. W. Stephenson.)

so on? A. Yes.

Q. Do you know how United's representatives voted at this meeting?

A. My information is, from both the United chairman and my own chaster chairman at that time, that they voted for it.

Q. Do you know what position the United Air Lines pilots may have taken at any subsequent convention of A.L.P.A.? A. No.

Q. You don't know whether or not at any subsequent convention they opposed the policy embodied in this resolution? A. No.

Q. Mr. Stephenson, which Western pilots do you think United should take over? I mean, which category?

Mr. Bennett: May I interrupt for a moment?

Examiner Wrenn: Mr. Bennett.

Mr. Bennett: At the end of this hearing, or the presentation of the Air Line Pilots case, I will make a statement for the record which will completely clarify that particular subject.

Examiner Wrenn: You aren't sworn.

Mr. Bennett: But I will be making a statement on behalf [2175] of both Western and United pilots, which will indicate that they are in complete agreement on the subject.

Examiner Wrenn: Well, that is not the question Mr. Kennedy has asked.

Mr. Bennett: He wants to know who should go, and how many.

Mr. Reilly: We will object to that unless it is by someone under oath.

(Testimony of A. W. Stephenson.)

Mr. Kennedy: Could Mr. Bennett make the statement now so that I could examine on it?

You don't have any policy witness?

Mr. Bennett: Our policy is indicated there in our pleadings.

Examiner Wrenn: Your question is perfectly proper, Mr. Kennedy. Go ahead and address it to the witness.

Q. (By Mr. Kennedy): Which category of Western pilots should United take over?

A. Pilots who were flying that route, or pilots junior to them.

Q. You don't have any definite notion as to which it should be?

A. Isn't that clear, that the policy is the pilots who were flying that route, or pilots junior to them?

Q. Would the Route 68 pilots have the first bid, and the first opportunity to go with United?

A. That is right.

Q. They have the first opportunity?

A. Yes. [2176]

Q. So that you and the men who were flying Route 68 with you would be the first to have a choice of going to United?

A. According to seniority.

Q. And choice would be theirs rather than that of either company?

A. That is right.

Q. Now, if, let us say, two pilots who had been flying Route 68 decided not to go, then you would get to the next number on the seniority list and give those fellows a choice?

(Testimony of A. W. Stephenson.)

A. That is right.

Q. Let's suppose that you and the people on Route 68 were all to go into United; wouldn't that necessitate bumping some people on the United's list?

A. I assume that it would. However, I can explain our situation on this. Considerable time has elapsed since this took place, and there are men that would come in that category we contend should have gone with United that are not even with Western any more, that are in the service, and so forth. And the second executive board meeting recognized that problem, and recognized it was a determination that would take a considerable period of time, and set the procedure for us to follow in establishing our standards.

Q. I don't *want* follow you on that. Do you mean to suggest that if, let's say, Pilot Jones had been flying Route 68, and he was one of the pilots who was flying Route 68, and Pilot Jones is now in the Army, that United would be required to take over only 30 pilots; is that right? [2177]

A. That might be, if there was no one else who wanted to go.

Q. Then you are saying that if there were 31 pilots on Route 68 United would be required to take 31 pilots?

A. No, we have no indication in that direction to arbitrarily fix a number two and a half years

(Testimony of A. W. Stephenson.)

after; that is, insofar as Western pilots were concerned.

Q. How would the Board write an order, Mr. Stephenson? What would they direct United to do?

A. We would ask them to direct United Air Lines to take what was the agreed-upon number and agreed-upon pilots between United pilots and Western pilots.

Q. What basis would you have for agreeing on the number? Would that be a matter of negotiation between the pilots?

A. That would be a matter of completing our meetings we have with them, the completion of the arbitration we already have in progress with them.

Q. Do you have an arbitration pending with them now—with United now?

A. With United pilots. We have a procedure in progress under our A.L.P.A.

Q. Oh, I see. United pilots and Western pilots are trying to agree on the number of pilots?

A. We are bound to.

Q. Then when you have arrived at that agreement as to that number, then it would be the agreement of the Air Line Pilots Association that United would take that number of pilots into their organization? [2178]

A. We would recommend to the Examiner and this Board that that is our proposal for the solution, and we would hope that they would do it.

Q. Let's pull a figure out of the air and assume

(Testimony of A. W. Stephenson.)

25 pilots, that that would be the number you and United pilots would agree on. Wouldn't that necessitate bumping the equivalent number of pilots on the bottom of the United's list?

A. Well, I might say that is an impossible number at this time.

Q. Let's say it is five.

A. Now, let's repeat the question again.

Examiner Wrenn: We are only interested in the principle, whether it is five or twenty-five doesn't matter. We are interested in the principle.

Q. (By Mr. Kennedy): Wouldn't United be required to drop from the bottom of its list—furlough—the number of pilots equivalent to the number of pilots they take over from Western?

A. Yes, I suppose so.

Q. Do you think, and Air Line Pilots Association think, that any provision should be made for those pilots?

A. I think it is up to the two groups to make a recommendation on that coordinated with the Air Line Pilots Association headquarters.

Q. Is Air Line Pilots Association prepared to make a recommendation on that in this proceeding?

A. No, I don't think so.

Q. Why, Mr. Stephenson, should the people who are on the bottom of United's seniority list take the loss on this [2179] rather than, say, Mr. Horn and Hoagland down a ways on the Western seniority list?

(Testimony of A. W. Stephenson.)

A. Because of the contract, the employment agreement that the pilots have with the company that provides for reductions, curtailment, or anything of that kind.

Q. You mean that is a loss that the United pilots incur because of the contract between United pilots and United? A. That is right.

Q. I don't understand that. What is there in that contract which subjects them to a possible loss because United takes on an additional operation?

A. Because of the policy that the pilots go with the routes and retain their seniority.

Q. You think from the point of view of United, or the United pilots, that is more or less of a calamity they have to face just as they would have to face a cut-back in United's schedules for some operating reason?

A. That is right. They put some 30 men to work on that route, and they had 30 jobs that we lost.

Q. Why wouldn't you look at it, from the point of view of the Western pilots, why isn't the sale of a route by an air line a natural calamity just as a reduction of schedules?

A. Because it is not our thinking and our policy. The pilots go with the route, and the pilot retains his rights. Companies and routes change, but men never do.

Q. Well, let's suppose that is the policy—as we are all clear it is. What is the justification for it?

(Testimony of A. W. Stephenson.)

A. Because it has been long established. [2180]
It has happened ever since we had such things. It has always been done that way. It is similar to other organizations, particularly in the railway groups, and things of that kind.

Q. Did you make any study of the railway situations that are comparable to this to determine whether they do it the same way in the railway business?

A. I did not. However, I am——

Examiner Wrenn: Had you completed your answer?

The Witness: Yes.

Mr. Kennedy: Yes, I understand he had completed his answer.

Q. (By Mr. Kennedy): Do you know what the Burlington formula provides, Mr. Stephenson?

A. In a general way, yes.

Q. Could you tell us why you think that is not a desirable formula?

Mr. Bennett: I don't think this is proper cross-examination. We have another witness on that subject who will be available. There was nothing on direct examination of this witness in that regard.

Examiner Wrenn: Technically, you may be correct, but we do exercise considerable latitude in these things, as I remarked in your favor today when you wanted some information. We want some information here, and this seems to be the most appropriate way to get it, so far as A.L.P.A. is concerned. Mr. Kennedy could certainly call Captain

(Testimony of A. W. Stephenson.)

Stephenson as his witness if he wanted to, and it seems we are just standing on technicalities here if he has to say: "Mr. Stephenson, [2181] you are now my witness."

Mr. Kennedy: I will be happy to call him as my witness.

Q. (By Mr. Kennedy): When Mr. Reilly asked you if the Burlington formula would be acceptable, you said "No," and I am wondering why?

A. Because technically with regard to a younger pilot, what he is interested in is security in his profession. I am a charter member of the Air Line Pilots Association, and I have been flying on routes ever since the first mergers occurred. I have seen mergers, sales, transfers, and always the pilots have gone with the routes, that principle has been maintained.

When you discuss with any of our membership anywhere, I have never found anyone in discord with that theory.

For instance, if we applied the Burlington formula to this thing, we would come down to one of these pilots who was moved from captain to co-pilot, and if we applied the Burlington formula, as I understand it, we would say, "You will have to stay with Western, and you will have to fly as co-pilot, but they will pay you your captain's pay."

Well, that is something to think about. But, after all, that gives him no insurance for his future. He lost his opportunity to stay and develop with

(Testimony of A. W. Stephenson.)

the—or stay on the captain's side and develop himself as a pilot.

If we had said to these 23 men on the bottom of the list, "We will pay you according to the Burlington formula, and you are done," in the first place we couldn't do it under our existing contracts, I don't think. We provide that when [2182] they are furloughed they have a certain length of time to remain—if they are never coming back—they are still the bottom man on the list the day there is a chance to fly.

Q. Mr. Stephenson, isn't the sense of your testimony that you don't think the Burlington formula is as good as the proposal you are making?

A. That is right. And I don't think it answers the pilots' requests in any way.

Q. Well, now, if the Board were to decide that the Burlington formula were appropriate, you wouldn't reject that, would you? A. Yes.

Q. What would be your course of action then?

A. I don't know.

Q. Well, would you consider it appropriate to call a strike on Western on that issue?

Mr. Bennett: I object. I don't think he has even the authority to call a strike on Western.

The Witness: I certainly do not.

Q. (By Mr. Kennedy): Would you consider it appropriate to propose to the proper authorities that they call a strike on Western?

A. Not until every resource of clarifying our problem, and our stand, had been made, and the

(Testimony of A. W. Stephenson.)

last resource had been exhausted. Then I don't know. I have no authority and I don't know what we would do.

Q. How about a strike on United? What would be your thought on that subject?

Mr. Reilly: I thought you would get to [2183] that.

Mr. Bennett: I don't think that is appropriate in cross-examination.

Examiner Wrenn: I think you have gone far enough on that, Mr. Kennedy.

Mr. Kennedy: All right. That is all I have.

Examiner Wrenn: Does Council 57, United Air Line Pilots, have any questions of this witness?

Mr. McBain: No, sir.

Q. (By Mr. Reilly): Mr. Stephenson, you said you have been familiar since you have been flying with all the mergers, acquisitions, and so forth. Have you ever heard of one where only a route was involved?

A. That was not being operated?

Q. No. Where only a route was being sold, a segment of a system, as Route 68 of Western.

A. Where there were no personnel.

Q. No, where the whole company wasn't being sold. Just a route.

A. I am not familiar enough with all of the mergers in the East here; that is, closely familiar with them, to know just what was involved.

Q. You, yourself, can you answer that "yes" or "no"? If you can't, then the record will show.

(Testimony of A. W. Stephenson.)

A. Where only a route was involved?

Q. Yes, that is right.

A. Yes. National Parks Airways was a route.

Q. When was that? A. 1937. [2184]

Q. That was part of the Civil Aeronautics Act; that was the whole company, wasn't it?

A. That is right. But it was just a route.

Q. It was the whole company, though, wasn't it?

A. Yes.

Q. You went with it, too; you went with Western Air Express as a result of that, didn't you?

A. That is right.

Q. Do you know of any case in which the Board by a merger, consolidation, or sale of a route, a case where they have directed them to do anything, to follow this prescribed formula the Air Line Pilots' Association has suggested in this proceeding? A. Not directed, no.

Q. Let me ask you another question. You said this is policy. What is the policy of the Air Line Pilots' Association with respect to the T.W.A.-Bonanza transaction which is now pending?

A. The policy——

Q. Are the T.W.A. pilots going to Bonanza?

A. I don't know the answer to that one.

Q. Well, let me ask you another one. You are familiar with the opportunities which Western offered to Arizona Airways to operate Phoenix-Yuma? A. Yes.

Q. Have the Western pilots of the A.L.P.A. taken the position that the Western pilots were

(Testimony of A. W. Stephenson.)

going to operate Yuma-Phoenix for Arizona Airways?

Mr. Bennett: If you know. [2185]

The Witness: I don't know.

Q. (By Mr. Reilly): You would know as master of your Council, wouldn't you?

Mr. Bennett: That assumes that he is master of his Council.

Mr. Reilly: It is in the record.

Mr. Bennett: It isn't for this year.

Q. (By Mr. Reilly): What are you now?

A. I am representing Western Air Lines' pilots in this case.

Q. You were master of your Council when that case was up? A. Yes.

Q. Was there ever any discussion at that time about that case? A. Yes.

Q. Did you come to a conclusion whether or not the pilots of Western were to operate the Yuma-Phoenix route for Arizona Airways?

A. No, we did not. We decided we had an interest in that, and there might be one or two pilots involved in case Yuma—that segment—was transferred to Arizona.

Q. What would happen if there were one or two?

A. There is very little flying involved. It is less than one hour a day.

Q. If there were only one or two pilots involved in this case, are you interested? [2186]

A. No.

(Testimony of A. W. Stephenson.)

Mr. Reilly: That is all I have.

Mr. Renda: I have just one or two questions, Mr. Examiner.

Examiner Wrenn: Go ahead.

Q. (By Mr. Renda): Captain Stephenson, if the Board were to attach the condition which you have requested, that the pilots be transferred to United, is it your recommendation and your opinion that it should be those pilots who were flying Route 68 as of the date of transfer?

A. Or pilots junior to them, as of the date the sale was announced.

Q. How about the co-pilots?

A. We are talking about pilots. When we say "pilots," we mean both.

Q. How about the co-pilots, would they go, too?

A. Yes.

Q. Now, wouldn't the seniority principle preclude that? Supposing a captain who had not been flying on Route 68 wanted to be transferred with the route, would he be preferred over a co-pilot who had been flying Route 68?

A. No. Why should he?

Q. Well, I am asking you.

Mr. Bennett: You have answered the question.

Examiner Wrenn: Go ahead.

The Witness: We think our theory is straight. The pilots flying the routes go with the routes. That is what we want. [2187]

Examiner Wrenn: When you say "pilots," do you include the co-pilots?

(Testimony of A. W. Stephenson.)

The Witness: Yes, always. When we say "pilots," we say any man, either a pilot or co-pilot.

Q. (By Mr. Renda): So in your opinion if the Board were to accept the September 1 date, for example, and you were flying Route 68 at that time, and you have position No. 3 on the seniority list, and Mr. Shirk was also flying Route 68 as a co-pilot, and had position No. 137 on the combined Western-Inland seniority list, Mr. Shirk should be transferred, also? A. That is right.

Q. And someone who would be occupying position seven, eight, or nine on the seniority list, but had not been on Route 68, would not be able to bump Mr. Shirk in this connection?

A. That is right.

Q. How many of the people who have flown on Route 68 in Western Air Lines have expressed a desire to you that they wanted to transfer to United—besides yourself?

Mr. Bennett: Do you want to fix a date?

Mr. Renda: I don't want to fix a date. I want to know at this time——

Mr. Bennett: At this time.

Q. (By Mr. Renda): How many want to go over to United? A. I don't know.

Q. Have you discussed this with them?

A. Yes. Not recently. [2188]

Q. Well, when was the last time you discussed it?

A. Well, discussed that point, they haven't indicated to me because I told them that I wasn't

(Testimony of A. W. Stephenson.)

ready for that information yet, to even consider it. The thing had to be established and set up as a plan so a man could make an intelligent decision on what he wanted to do.

Q. Given the opportunity, you would be willing to transfer?

A. I would be willing to transfer if by my not doing so one of these junior men was put out of a job. I mean, if I passed up my opportunity and by so doing it put a junior man who was flying the route at that time out of the job, I would do it.

Q. Mr. Stephenson, I appreciate your solicitude for the junior man, but I want to know irrespective of that if the Board attached a condition, and you were given the opportunity, would you yourself want to transfer to United?

A. That is my answer.

Q. Your answer is "Yes"?

A. My answer is my previous answer.

Q. Do you know if Mr. Fred Kelly, No. 2, would want to transfer? A. No.

Q. Do you know if Mr. Carlton would want to transfer? A. No.

Q. Do you know if any of them would want to transfer?

A. Yes, I have a pretty good idea some of them would.

Q. Please give the names.

Mr. Bennett: Well, now, just a minute. We don't want [2189] the names if he just has an idea. We don't want just an idea.

(Testimony of A. W. Stephenson.)

Examiner Wrenn: If he knows.

Mr. Kennedy: I don't think we need the names. It does not help the question.

Mr. Renda: It is not going to hurt.

Mr. Kennedy: We have the testimony.

Examiner Wrenn: I haven't heard anybody object to giving the names.

Mr. Bennett: Well——

Examiner Wrenn: I am interested in the numbers.

Mr. Bennett: I recognize that, and before this hearing terminates we will assure you that the number will be recommended not only by Air Line Pilots Association——

Examiner Wrenn: Let's find out what this witness knows as to the number of people who have told him they want to go. If he doesn't know, he can say so.

The Witness: I don't feel that I can state definitely of my own knowledge at this time whether they are one or more, one or twenty, or what the number might be, or what their inclination might be.

Q. (By Mr. Renda): Have you ever discussed it with Captain Turner, as to whether he wants a transfer to United?

A. No, because I knew it wasn't necessary.

Q. Does he want a transfer to United?

A. No, I know he doesn't.

Mr. Renda: Mr. Examiner, that is why I want to know the names, because we have gone through

(Testimony of A. W. Stephenson.)

several agreement procedures [2190] in our company and there has always been this representation on the part of the Air Line Pilots Association voiced by Mr. Stephenson that this is the wish of the air line pilots, and when we get down to cases we don't find that.

If Mr. Stephenson does not know, he can say so. He has discussed this with certain pilots, and if he knows there are certain pilots who want to be transferred, it is proper for him to tell us how many there are, and who they are.

Mr. Bennett: I submit he has answered the question. He says he doesn't know who they are, or how many there are. I don't think anybody could testify on that subject. The only way to get an answer to that would be to bring the pilots in and ask them.

Q. (By Mr. Renda): Well, then, let me ask you this: You are sponsoring Exhibit 1 here, and you have discussed this case with a lot of people who have worked for our company, and you have a lot of facts in here, and I suppose in that discussion you have also discussed this proposition of pilots wanting to transfer.

Do you know of your own knowledge whether any of the pilots allegedly adversely affected desire to transfer to United, other than yourself?

A. Yes. I am confident that there are some that will.

Examiner Wrenn: Do you know?

(Testimony of A. W. Stephenson.)

The Witness: I have no commitment from anyone that he would go.

Examiner Wrenn: Did you question these 21 in here? Do [2191] you know of your own knowledge about their own feelings in the matter?

The Witness: Mr. Examiner, I have discussed it many, many times with many groups and many different individuals, and because I don't have an up-to-date group, or an up-to-date list of who might be interested, I am remiss in that respect, but it has never occurred to me that it was proper, as yet, to ask a man whether he wanted to go with United on this transfer when it was made, because I couldn't answer to him how many was going, or when they were going, or under what conditions.

Examiner Wrenn: In other words, you do not have a clear, definite idea on that situation?

The Witness: No, sir. We have a plan to get it in our arbitration; we have a method between our two groups, of getting at that information, getting it soon.

Examiner Wrenn: But you don't have it now.

The Witness: No, sir.

Q. (By Mr. Renda): Captain, then how did you come to some agreement as to the pilots' position in this case, that the pilots who had been flying on Route 68 wanted to be transferred to United?

Mr. Bennett: Will you designate the party? I am not sure what you mean. Do you mean——

(Testimony of A. W. Stephenson.)

Mr. Renda: The pilots that are involved here, yes.

The Witness: I don't understand——

Q. (By Mr. Renda): You have testified that it is your position, and it is the position of the pilots who are flying Route 68, [2192] that the Board ought to find that they are adversely affected and as a result should attach a condition that they should be transferred to United. Let's not go into how it could be done, or should be done. Let's stop there.

I want to know how you arrived at that conclusion. Is it just your opinion? Is it the combined opinion of the men who were flying? If it is, then I think that is the foundation for your telling us how many want to be transferred.

Mr. Bennett: I think the question has been answered by a resolution of the entire Air Line Pilots Association, including all of Western's pilots and all of United's pilots. I submit the question that has been just put has been answered. But, however, if you insist on it, go ahead and answer it.

Mr. Renda: Mr. Examiner, at times I find it difficult to distinguish between the Air Line Pilots Association and Mr. Stephenson. I think he gets my point.

Examiner Wrenn: Go ahead and answer.

The Witness: I believe I understand the question. Some time between March 7, 1947, and March 19, 1947, the newspaper announcements were made

(Testimony of A. W. Stephenson.)

that Western Air Lines was selling Route 68 to United Air Lines.

During, I think it was about the 10th or 12th of March, 1947, a pilots' meeting was called of Council 16 of Western Air Lines, in Salt Lake City at Hollywood Roosevelt Hotel, and company officials were asked to be present. And Mr. Wooster, Chief Pilot, and Mr. Thayer, Assistant Chief Pilot, represented the company. It was a meeting at which there were some who—everybody in town was either there or [2193] represented. This news was discussed, and some individuals were naturally very much concerned about it as to what was going to happen—whether the pilots were going to go with the route, or what was to happen.

The majority at the meeting decided to ask Mr. Wooster to call Mr. Drinkwater on the telephone here in Washington, and advise him we were much concerned and wanted the policy of the years past, which is known to every Air Line Pilots Association member—that the pilots go with the route——

Mr. Renda: Mr. Examiner, I don't want to interrupt the witness, but I think he is getting pretty far afield, and I don't think the answer is responsive to the question.

Examiner Wrenn: I can't tell yet.

The Witness: I mean that the answers started from that meeting, and previous meetings, as to what had been done to approve what had been done, is my reason for stating the pilots' position, or my justification for stating it.

(Testimony of A. W. Stephenson.)

Q. (By Mr. Renda): Then let me ask you this: Did the Western's Council pass any resolution with respect to this? A. Yes.

Q. What was the nature of that resolution?

A. To instruct Air Line Pilots Association headquarters that they insist that the policy be carried in this case.

Q. When was that passed?

A. That is what we passed that day.

Q. That is——

A. That is the action that was taken, and the report [2194] of it was verbally by telephone transmitted to Mr. Drinkwater in Washington.

Q. You were Master Councilman at that time?

A. No, I was not, but I was there.

Q. Well, then, Captain, you cannot give us at this time any number of the particular pilots that you feel should be transferred in the event the Board were to find that such a condition was appropriate? A. That is right. I can't.

Mr. Renda: No further questions.

Examiner Wrenn: Mr. Reilly.

Q. (By Mr. Reilly): Is your feeling about the pilots going with the route, because you feel that the pilots have a proprietary interest in the route?

A. I am not——

Q. Well, property right. Do you think they have a property right in the route?

A. I think they have a right to fly the route. I don't think they have a right to claim that the

(Testimony of A. W. Stephenson.)

route is part theirs, or that they have any monetary interest in it.

Q. How far do you think their interest goes?

A. The right to fly it.

Q. Then why are you worried about pilots who were not flying the route being taken over by the United Air Lines?

Mr. Bennett: I submit that is argumentative.

Mr. Reilly: It is not argumentative.

Mr. Bennett: It is argumentative.

Mr. Reilly: Well, the Examiner can decide it. [2195]

Examiner Wrenn: Answer the question, Captain.

Q. (By Mr. Reilly): I say, if you say their interest is the right in flying the route, why is it you are insisting here that those pilots not flying the route should be absorbed by United?

A. I am not insisting on it.

Q. Well, in the event that the pilots who were flying the route do not want to go, you would give them the opportunity of going; is that correct?

A. I don't understand you.

Q. If you, for example, decide not to go with the route, that you don't want to go with the United—and I know that you don't—if you decide that you don't want to go, then what happens?

A. Another man who was flying the route has the opportunity.

Q. And then if he doesn't want to go, doesn't

(Testimony of A. W. Stephenson.)

it go down the line until you get to somebody on Route 13? A. Very unlikely.

Q. Then, all you are interested in is those pilots flying the route.

A. The date that the sale was announced.

Q. That is all you are interested in?

A. That is right.

Q. Nobody else? A. That is right.

Mr. Reilly: O. K.

Examiner Wrenn: Captain Stephenson, if the Board should order the transfer of pilots of Western's Route 68 to [2196] United, does that settle the matter, or do we get into another controversy over seniority lists?

The Witness: No, sir. Between the pilot groups we have agreed on a procedure to indicate to you how we would do that, and it would be, after all, the seniority list of an air line is something between the management and the pilots, and if United pilots and ours agree on that, on the number, we will say, and the people, the——

Mr. Bennett: Identity.

The Witness: The identity, we feel we have done our part, and it is within the contracts we have, and everything else, and it should be considered as the decision of both groups, and should stand with both companies.

Examiner Wrenn: You think it is both possible and their duty to do that?

The Witness: For the pilots to reach that agreement.

(Testimony of A. W. Stephenson.)

Examiner Wrenn: Yes.

The Witness: I am sure of that.

Examiner Wrenn: And there is no question as far as the pilots are concerned as to that the seniority problem could be settled satisfactorily?

The Witness: We agree to that.

Examiner Wrenn: Well, I don't want to argue other cases with you.

What is the No. 1 route as far as Western pilots are concerned; that is, those with the most seniority?

The Witness: Now?

Examiner Wrenn: Yes.

The Witness: Route 63. [2197]

Examiner Wrenn: That is the whole route north from Los Angeles to Seattle, or just the extension from San Francisco?

The Witness: Los Angeles to Seattle. We have to fly it that way, sir.

Examiner Wrenn: Is your rate of pay on that comparable to the rate of pay on Route 68?

The Witness: Yes.

Examiner Wrenn: With the exception, possibly, of some terrain features, or——

The Witness: No. We have terrain on neither one. Never did have terrain on those routes.

Examiner Wrenn: Well, do I correctly get the impression from your testimony that given your choice you, yourself, personally—given your choice as the No. 3 man on the Western seniority list, if

(Testimony of A. W. Stephenson.)

you were going out to bid a route you would bid the 68?

The Witness: If we had it.

Examiner Wrenn: If you had it, you would bid the Route 68 in preference to 63?

The Witness: That is right.

Examiner Wrenn: I don't want to get into any hypothetical field there, but I was just wondering if you had kept Route 68 and got 63, whether there would be any inclination on the part of the pilots to bid 63 as a better run.

The Witness: No. Because on Route 68, just as United does now, we could operate a number of non-stop schedules. You know that weather—also passengers and other delays—is not going to affect you once you are off the ground on—or at least you can expect, after you are off the ground [2198] at any terminal until you arrive at the other terminal. Consequently, you get four hours or four hours and 40 minutes of flying the easiest way it is possible to get it.

Examiner Wrenn: Your answer is dictated by an operation of, we will say, DC-4 equipment, not the fact that if you kept Route 68 there might have been the possibility of putting DC-6's on?

The Witness: That is on DC-4 or DC-6 equipment, either one. It would apply.

Examiner Wrenn: Are you going to have much redirect?

Mr. Bennett: Mine is going to be rather exten-

(Testimony of A. W. Stephenson.)

sive. I would suggest that we go over until tomorrow morning.

Mr. Kennedy: I have one question which can wait until the morning, however.

Examiner Wrenn: Go ahead.

Q. (By Mr. Kennedy): It seems to me an answer you gave Mr. Reilly contradicted an answer you gave me. I understood that you said if the pilots flying 68 didn't want to go to United, then the pilots junior to them would have the opportunity to bid to go to United.

A. As I understood Mr. Reilly, he was trying to get an indication of a number, or we were talking about that we would go and get the entire group and move it over. The thing is this: I believe at this stage that we, everyone's ideas on the thing, in meeting with the pilot groups, that we can comply with the A.L.P.A. policy in the numbers and identities and never vary from men who are qualified on 68, and flying it. [2199]

Q. Is it your testimony that you think that is the way it would work out? A. That is right.

Q. Now, it is possible that it wouldn't work out that way, that some of the Route 68 pilots would say "We don't want to go with United," and then it would be your policy to take some of the junior ones? A. That is A.L.P.A. policy.

Q. So your answer to me was directed to policy, and your answer to Mr. Reilly was directed to the way it was going to work out.

(Testimony of A. W. Stephenson.)

A. That is right.

Mr. Kennedy: That is all.

Examiner Wrenn: Anything further?

Mr. Reilly: Yes.

Q. (By Mr. Reilly): Does the Air Line Pilots Association have to approve this agreement between W.A.L. pilots and U.A.L. pilots?

A. No.

Q. Suppose we just took you, and nobody else, would that settle the matter? And I am not being facetious. Would you answer my question.

A. No.

Mr. Reilly: O. K.

Examiner Wrenn: Let's recess until tomorrow morning at 10 o'clock in this room.

(Thereupon, at 5:25 p.m., the hearing was adjourned until Tuesday, November 15, 1949, at 10 a.m.) [2200]

Examiner Wrenn: All right, gentlemen, may I have your attention.

Captain Stephenson, you may resume the stand. Whereupon,

A. W. STEPHENSON

resumed the witness stand, and was examined and testified as follows:

Examiner Wrenn: Before Mr. Bennett takes his redirect, are there any further questions of this witness on cross-examination?

Mr. Renda: I have none, Mr. Examiner.

Mr. Reilly: I have none, Mr. Examiner.

Examiner Wrenn: All right, Mr. Bennett.

(Testimony of A. W. Stephenson.)

Redirect Examination

By Mr. Bennett:

Q. Mr. Stephenson, in answer to a question by Mr. Renda, you indicated your earnings for 1946 were \$11,383.13. A. Yes.

Q. Do those earnings reflect a comparable earnings for flying DC-4's on Route 68 for that year?

A. No.

Q. Will you tell us how that earning was acquired during 1946?

A. From April 26 to December 31 that was DC-4—that was for flying DC-4's on Route 68. From January 1 to March 26 that was for flying DC-3's on Route 19. And there was no flight pay paid me from March 26 to April 26.

Mr. Renda: What year? [2205]

The Witness: 1946. There was base pay but no——

Q. (By Mr. Bennett): No what?

A. No flight pay. That is to say, it wasn't paid me during that time. I might have received pay during that period for previous flight periods.

For instance, on the 20th of April I received my pay for March flight time.

Q. What were you doing during the month of April?

A. Flying—qualifying on Route 68, and the equipment.

Q. And that took a month?

A. Exactly from the 26th of March to the 26th of April.

(Testimony of A. W. Stephenson.)

Q. Now, in the pay for flying DC-3's, that is something less than pay for flying DC-4's; is that right? A. That is right.

Q. Now, in 1947, you indicated, in answer to a question by Mr. Renda, that your pay for 1947 was \$12,382.22. Does that figure—is that a comparable figure for a flight of DC-4's over Route 68 for that year 1947? A. No.

Q. Well, will you explain what equipment you were flying during that year and why it is not a comparable pay?

A. I was flying DC-4's on Route 68 until the 15th of September, 1947, and then went into DC-4's on Route 63.

Q. Now, after the 15th of September a portion of your time was taken up in qualifying on the new route; is that right? [2206]

A. That is right.

Q. And I think that worked out something like five days of actual flight time——

A. About seven days.

Q. Did the pay you received for the balance of the year 1947 in your flying of DC-4 planes over Route 63 equal the pay that you would have received on Route 68 flying DC-4's? A. No.

Q. Why?

A. Because of the difference in the amount of night flying time that was available to myself and the other senior pilots.

Q. And I believe you testified yesterday that

(Testimony of A. W. Stephenson.)

the difference was something in the neighborhood of \$150 a month; is that right?

A. That is right.

Q. Now, you testified yesterday, in answer to another question from Mr. Renda, that your 1948 pay was \$12,517.45.

A. That is right.

Q. Does that figure reflect the figure that would have been earned on DC-4 planes on Route 68?

A. No.

Q. Will you tell us why it does not?

A. Because the scheduling—the adjustment and scheduling did not, until about May of that year, adjust itself back with a complete cycle of part of a summer and a winter's experience on the thing, reverting back to the system we had, and was easily usable on Route 68 to the senior captains [2207] flying night runs.

Q. You mean during a part of—until May, 1948, you didn't get a comparable amount of night flying; is that it?

A. That is right.

Q. Now, Captain, in answer to a question by Mr. Reilly you indicated that you were familiar with the contemplated sale of a small portion of Western's route to Arizona Air Lines; is that true?

A. That is true.

Q. Do you know how much time was involved in the flying on that line that was contemplated being sold?

A. It was approximately an hour a day, as I remember it.

Q. And the pilot flies 85 hours a month; I mean,

(Testimony of A. W. Stephenson.)

that would be one pilot's work; is that right?

A. That is right.

Q. Was the time you remember equal to one pilot?

A. No.

Q. I am not certain about this, but I think you answered that there were two pilots involved. Did you make such an answer?

A. I did. What I meant by that was that there were two pilots who normally flew the route, and that they were the individuals involved and concerned about what would happen to them when the route was sold.

Q. But the time involved was only one pilot's time?

A. That is right. They flew other routes. They did not fly just Yuma. They flew the circuit.

Q. Yes. Now, I believe in answer to a question of [2208] Public Counsel he asked you whether or not if Western's pilots were required to be taken into United's list, if that wouldn't result in the furloughing of United pilots. Do you remember that question?

A. I do.

Q. And what was your answer at that time.

A. My answer was that that was something that would occur.

Q. Would you enlarge upon that? Would that have occurred, in your opinion, in 1947 when this route was exchanged, or when the route was sold?

A. No, not in any way involving the sale of Route, because——

Mr. Reilly: Mr. Examiner, I am going to object

(Testimony of A. W. Stephenson.)

to this unless he has a foundation as to how Captain Stephenson knows anything about what would happen on United Air Lines.

Examiner Wrenn: That is a proper objection.

Q. (By Mr. Bennett): Do you know that pilots would be furloughed at the bottom of United's list if Western pilots were taken into United?

A. No.

Mr. Reilly: I object to that question.

Mr. Bennett: If you know.

Examiner Wrenn: Read me the question. I thought he asked "Do you know."

(The question and answer were read.)

Examiner Wrenn: Perhaps you could explain that answer. Captain Stephenson. [2209]

Mr. Reilly: Does he mean No, he doesn't know, or does he mean no, they wouldn't be furloughed. That is what I want to know.

The Witness: I mean that I don't know.

Examiner Wrenn: All right. That clears it up. Go ahead.

Mr. Bennett: That is all.

Examiner Wrenn: I want to be sure I understood you on one thing, Captain. The question I asked you yesterday afternoon. I believe you said that the question of merging of seniority lists in the event the Board should impose as a condition that which the air line pilots seek here, had been settled.

The Witness: It has been agreed upon by the

(Testimony of A. W. Stephenson.)

two groups of pilots that they will settle that between themselves by arbitration.

Examiner Wrenn: Was that an arrangement between the pilots of United and the pilots of Western, or was that done by the Air Line Pilots Association?

The Witness: No, sir; that was done between the two groups of pilots.

Examiner Wrenn: Well, would you give me a little bit more of the procedure, or what was done? Was a meeting called for that purpose, or how did you happen to enter into the arrangement?

The Witness: That is right, sir. We were called together by the Air Line Pilots Association and told that they thought we should resolve our difficulties and agree upon a plan to settle it. [2210]

Examiner Wrenn: And you did agree upon a plan?

The Witness: We did.

Examiner Wrenn: And there is no question as far as this Board is concerned with respect to any seniority problems?

The Witness: No, sir. We are bound—have committed ourselves to arbitration, and to agree to those points.

Mr. Bennett: And I take it it is your intention, Mr. Stephenson, to inform the Board of the outcome of that arbitration?

The Witness: That is right.

Mr. Bennett: And to recommend in accordance with it the number and the identity of the pilots,

(Testimony of A. W. Stephenson.)

who the two groups recommend should be transferred?

The Witness: That is right. And their recommended positions on the seniority lists.

Examiner Wrenn: Both groups are committed to accept the decision of the one who is called upon to arbitrate?

The Witness: We are, sir.

Examiner Wrenn: I would like to ask you one other question on a different line, Captain.

As I recall Mr. Drinkwater's testimony in the first hearing, he stated that there were 14 crews on Route 68, and it is my recollection that he said that that number—at least that number, and maybe more, would be required to operate the Seattle extension.

I hope I haven't done violence to his testimony.

What I want to know is, do you know of your own knowledge whether or not those 14 crews on Route 68 were [2211] transferred over and began to operate on Route 63, particularly the extension?

The Witness: They were transferred to Route 63, but in so doing they displaced crews that were already operating Route 63.

Examiner Wrenn: What I am trying to get at is the number of crew men that would be required to operate the extension that was granted—the Seattle extension.

The Witness: Normally, sir, the difference in that is about 39 hours of flying per day on Route 63, the extension from San Francisco to Seattle—

(Testimony of A. W. Stephenson.)

no, I will correct that. On Route 68, 39 hours as a round number. That is the daily work load. And on the 63 extension the normal work load has been about 22½ hours, so that is roughly half of the normal number of crews on 68, or approximately half who are required to operate the extension.

Examiner Wrenn: That is about seven crews?

The Witness: That is right, sir. It would take a fine calculation as to the number of hours, and so forth, because after all we are governed closely and regulated closely as to the number of hours we can fly, and how we can accomplish that without going over the 85 hours.

Examiner Wrenn: Is it your testimony that as a result of the Seattle extension only seven crews are needed so the result was a net loss of seven crews to the Western system?

The Witness: That is right, sir. However, the Western pilots have never, if I may explain to you——

Examiner Wrenn: Sure. Go ahead.

The Witness: ——have never been in accord with that [2212] line of thinking. For this reason: That Seattle, the application of Western to operate to Seattle was history. The decision, everything, had been put into that months before, and we were waiting day by day, and we were primed and set ready to fly it. And we felt that because before the Board ever started formally contemplating giving this transfer, that they issued an order authorizing Western to fly Route 63. That, of course, is one

(Testimony of A. W. Stephenson.)

of the things that both United and Western's pilots realized, and one of the things we realized we must discuss and consider, and we expected to do that.

What I am getting at is, that a Western pilot flying for Western in 1947 felt that the Western extension was something that we were entitled to, were looking for the Board to give it to us. We were looking forward to it.

Do you get what I mean?

Examiner Wrenn: I understand your position on it.

The Witness: However, time has been lapsing since then. A lot of things have happened and occurred to change that situation. Western pilots appreciate that, and we have gotten together and said we propose to settle and make a binding settlement that will bring us in accord.

Examiner Wrenn: Mr. Renda, do you have anything further of the witness?

Mr. Renda: I have.

Recross-Examination

By Mr. Renda:

Q. You say that the pilots were primed and set ready to fly Seattle long before the Board certificated Western to [2213] Portland-Seattle?

A. That is right.

Q. Now, the Board's decision awarding extension of Western's Route 63 to Portland and Seattle was prior to the commencement of the proceeding in the Route 68 case?

A. That is right.

(Testimony of A. W. Stephenson.)

Q. And did any pilots at any time prior to that time, the time I have in mind is May 20, 1947, qualify on Route 63 north to San Francisco?

A. No.

Q. Was any training undertaken?

A. We trained on equipment, yes.

Q. Well, you were trained to fly DC-4's because they were flying between Los Angeles and San Francisco, and that is the equipment that was used on that route?

A. No, not altogether. We had 52 crews trained to fly DC-4's at that time.

Q. Is it your testimony that Western Air Lines undertook a program to operate the route north of San Francisco to Seattle prior to the Board's decision?

A. They undertook a program to train flight crews on DC-4 equipment so they would have sufficient crews to operate Route 63.

Q. Route 63 to where?

A. From San Francisco to Seattle, and also operate six round trips to Denver.

Q. That is just your opinion?

A. Well, I know what the plan was. I know that we had 52 crews. [2214]

Q. Did you qualify on the route north of San Francisco to Seattle before the Board's decision?

A. I didn't say——

Q. Answer my question, please.

A. I did not.

Q. At the time that Mr. Drinkwater testified on the Route 68 case on May 20, 1947, and there was

(Testimony of A. W. Stephenson.)

mention of 14 flight crews, 14 flight crews is the number mentioned at that time to operate four round-trips; is that correct?

A. That is what he stated was the number.

Q. Well, now, didn't you testify yesterday that it takes three and a half crews to fly one round-trip between Denver and Los Angeles?

A. I testified to that, yes.

Q. And isn't three and a half times four fourteen? A. A——

Q. You can answer that.

A. That is right.

Q. Now, let us turn to September, 1947, at the time the route was transferred. How many round-trips were being operated? Two, is that correct?

A. That is right.

Q. And two times three and a half is seven flight crews? A. That is right.

Q. Hasn't it been necessary to absorb more than seven flight crews between San Francisco and Portland and Seattle?

Examiner Wrenn: Read that question back, please.

(The question was read.) [2215]

Examiner Wrenn: I don't follow you there, Mr. Renda. Maybe the witness does.

Q. (By Mr. Renda): In the operation north of San Francisco to Portland and Seattle with the three schedules Western put into service starting August, 1947, didn't it require more than seven flight crews to operate that extension?

(Testimony of A. W. Stephenson.)

A. About seven flight crews. That is an approximate figure.

Q. All right. And weren't the other seven flight crews from Route 68 absorbed elsewhere on Western's system?

A. The actual crews from 68, most of them, yes; not all of them. Some of them are on this list here.

Examiner Wrenn: Let me clear up one thing. Where did those seven flight crews come from that you and Mr. Renda have been discussing?

The Witness: Well, originally, and incidentally we were talking about 14 flight crews that I testified was the absolute minimum of men that could fly Route 68 with no time off—everyone flying 85 hours per month to operate that route.

Now, when——

Examiner Wrenn: Let's be clear. I don't want you to explain Mr. Drinkwater's testimony. When Western comes along with their case I expect them to clear that up. I just want to know if you have any knowledge on that 14 flight crews Mr. Drinkwater testified about.

Now, these seven you were talking about, were they taken off of Route 68 as of August 1, 1947, or were they hired elsewhere in that program you were talking about? [2216]

The Witness: They were taken off Route 68 on August 1, the original ones.

Examiner Wrenn: And when the route was transferred, what happened to the other crews?

(Testimony of A. W. Stephenson.)

The Witness: The other seven senior to them moved on Route 63 and used their seniority to reduce.

Examiner Wrenn: So the 14 crews actually moved over to Route 63, after you began to operate the extension to Seattle?

The Witness: The minimum number of 14 crews, sir.

Examiner Wrenn: Go ahead, Mr. Renda.

Q. (By Mr. Renda): Do you question the fact that in 1946, 1947, and 1948 you earned the amounts that we have been mentioning—\$11,000, \$12,000, and so forth?

A. I question—raise a question as to whether I was earning or that was what I was paid. Because the pay roll department does not report to the Government our earnings for the year, but what we are paid for the year. And that means December—in January, 1948, shows what I—I get my flight paycheck for December, 1947. That is what I mean.

Q. Well, now, certainly there can be no doubt in your mind as to whether or not you earned and were paid this money or you were not, is there?

A. There is no doubt in my mind I was paid that amount of money.

Q. Very well. What type of equipment were you flying in April, 1948? A. 1948? [2217]

Q. Yes. A. Convairs principally.

Q. Practically all Convairs?

A. I believe so.

(Testimony of A. W. Stephenson.)

Q. Do you know what you earned in 1948, in April?

A. I don't have that figure with me.

Q. Our records show you earned \$1,114.91. What were you flying in April, 1947? A. DC-4's.

Q. On Route 68? A. That is right.

Q. Do you know what you earned in April, 1947? A. No.

Q. Our records show \$1,118.25.

A. Do your records show that is what I earned or what I was paid?

Q. That is what you earned. You were finally paid that amount.

A. Do your records show that—when I earned that?

Q. Our records show that you were paid that on the basis of the retroactive adjustment.

A. I was inquiring whether that was what I earned or what I was paid in money that month.

Q. Do you remember what type of equipment you were flying in April, 1948—Convair, wasn't it?

A. We mentioned that once, yes.

Q. Yes. All right, how about March? That was Convair, too, wasn't it? Do you remember what your earnings were in March, 1948? [2218] \$1,178.31?

Mr. Bennett: May I inquire the purpose of this? If it is important to this record, I don't want to stop him, but I don't see any—

Mr. Renda: I think the purpose is very obvious. Mr. Examiner.

(Testimony of A. W. Stephenson.)

Mr. Bennett: Well, I would like to see. It isn't me.

Mr. Renda: It is to the Examiner.

Examiner Wrenn: I think I see the purpose of it. Continue.

Q. (By Mr. Renda): In March, 1947, you were flying DC-4 equipment? A. Yes.

Q. Do you question that you earned \$1,129.74?

A. No. That is probably right.

Mr. Renda: No further questions.

Examiner Wrenn: Without arguing about particular questions, you raised the point there of what you earned and what you were paid. Perhaps you keep some pay in the hole, or something like that, but what Mr. Renda is bringing out is that your earnings have been practically the same whether you flew DC-4 or Convair airplanes.

The Witness: There is not much difference in the two airplanes.

Examiner Wrenn: Well, there was a question by you as to whether there were some earnings in March that was carried over to April, or in April carried over to May.

The Witness: Well, that doesn't affect the amount where a full month of flying is concerned, the amount of pay. But what I would like to explain to the Examiner is that the [2219] \$11,000 figure in 1946 is no—there is four months that was in there where there was no DC-4 flying in it, and one month there was no flight pay at all.

(Testimony of A. W. Stephenson.)

Examiner Wrenn: I think we are clear on the record on that, Captain.

Anything else before I excuse the Captain?

Mr. Reilly: I have some questions, if I may, please, sir.

Examiner Wrenn: All right.

Q. (By Mr. Reilly): Going back to Yuma-Phoenix, as I understood your testimony in answer to both direct and redirect, and everything we have had here, you were interested in the principle that was involved in this proceeding. The transfer of pilots with the route.

Now, as I understand your testimony, and your answers to Mr. Bennett on redirect—and you can correct me—you are not interested if only one pilot is involved, or only 29 flying hours a month are involved?

A. We are interested if one pilot is involved.

Q. How are you going to spilt this pilot up on Yuma-Phoenix?

A. I didn't finish my answer.

Examiner Wrenn: Go ahead.

The Witness: When it comes down to a problem of that kind where there is only 30 hours, or so, I agree with you, you can't split a pilot.

Q. (By Mr. Reilly): Isn't the real answer, Captain, that a senior pilot [2220] is not involved in this case?

A. That is certainly not the real answer.

Q. Now, tell me a little bit about this experience you had at National Parks. What was your posi-

(Testimony of A. W. Stephenson.)

tion up there before it was sold, or transferred to Western Air Express?

A. Vice-president in charge of operations.

Q. What did you become in the new company?

A. Division superintendent.

Q. How long did you stay in that position?

A. Until April, 1939.

Q. What happened?

A. I went back to flying.

Q. Why?

A. We started a reduction campaign in costs and overhead.

Q. Well, that isn't any different, is it, Captain Stephenson, from what Mr. Drinkwater has said he has been trying to do in Western Air Lines today, and tried to do in 1947, is it?

A. Not particularly, no.

Q. I don't want you to interpret his testimony. I am just asking you about his statement.

Now, when was the last time you had anything to do with the assignment of crews? Was it when you were division superintendent of Western Air Express, or vice-president of National Parks Airways?

A. With Western Air Express.

Q. And that was in 1939. What kind of equipment? Boeings? [2221]

A. That is right.

Q. What—247's?

A. That is right.

Q. Have you ever had any experience in the assignment of crews, for DC-4's or Convairs?

A. Yes.

Q. You have? In what capacity?

(Testimony of A. W. Stephenson.)

A. Air base commander in the Army.

Q. Now, that is very interesting. On a commercial air line. That is very interesting. I am glad to know you were in the Army.

But how about on a commercially scheduled air line? A. In assigning——

Q. Assigning crews and setting up schedules. You have made a lot of testimony——

Mr. Bennett: I don't think you should argue with the witness. Ask a question and you will——

Mr. Reilly: This is cross-examination.

Mr. Bennett: That still doesn't permit you to harass the witness.

Examiner Wrenn: Will you gentlemen both be quiet, please?

Go ahead.

Q. (By Mr. Reilly): Can you answer my question—when was the last time, if ever, you have assigned schedules or set up crews on a DC-Convair equipment, or DC-3 equipment, on a scheduled commercial air line? A. I never have. [2222]

Q. All right.

Now, let's talk a little bit about these resolutions adopted by the Air Line Pilots Association's Executive Board. Did you ever at any time—let me first say this: Have you got all your records here? Have you got copies of all resolutions passed and adopted by the Executive Board with respect to this transaction? A. I have not.

Q. Let me see if I can refresh your recollection. Did you ever at any time state that the following

(Testimony of A. W. Stephenson.)

resolution was adopted by the Executive Board of the A.L.P.A. in connection with this transaction:

“Therefore, be it resolved that the sale of the W.A.L. Denver-Los Angeles route to U.A.L. should be treated as a sale of a portion of an air line to another and be governed in principle by the resolution pertaining to such, passed by the first and second Executive Board meetings;

“Be it further resolved that the number of pilots involved in the transaction in our opinion should be 21;

“Be it further resolved that the identity of the 21 pilots to be determined by W.A.L. pilots, but they must be pilots who were actually flying that route at the time the sale was made public or pilots junior to them.”

Examiner Wrenn: Read the first part of that question, Mr. Reporter, the part before the quotation.

(The record was read.) [2223]

The Witness: May I ask, is the question: Did I state this to the Board?

Examiner Wrenn: Do you want to hear the question again?

The Witness: Yes.

Mr. Reilly: To anybody.

The Witness: Yes, I stated this resolution to the Civil Aeronautics Board in an informal session.

Q. (By Mr. Reilly): It was December 5, 1947, for the record? A. That is right.

(Testimony of A. W. Stephenson.)

Examiner Wrenn: Now, what is the state of the record on that answer there?

(The answer was read.)

Q. (By Mr. Reilly): Can you tell me when that resolution was adopted by the Executive Board of the A.L.P.A.?

A. The second executive board meeting in November of 1947.

Q. Now, let me show you this document. This is a document entitled, "Petition by the Air Line Pilots Association for Reconsideration of the Order of August 26, 1947," and it is dated on the front page September 23, 1947.

On the Jurat page, which is page 16, Mr. Behncke certified and verified to this document 23 September, 1947, and I assumed it was filed with the Civil Aeronautics Board as promptly thereafter as it could be handled through the mails or by hand.

And I show you on page 7 what purports to be a resolution, and quoting from this: [2224]

"So far as United and Western pilots are concerned, the following resolution passed by the Executive Board of the Air Line Pilots Association at its last meeting on May 24, 1947, is quoted."

I will read the resolution:

"Resolved, that in the event of a merger, acquisition, dissolution, or any other form of the acquiring of one air line by another air line, or a part thereof, that the air line pilots

(Testimony of A. W. Stephenson.)

flying on such air lines or portions thereof at the time such event occurs are considered as being acquired with the air line or portion thereof and their respective accrued seniority rights remain as their possession and continue to accrue as their possession after such ownership, and moreover that such pilots and co-pilots flying on that air line at that time cannot be dealt with unfairly and their continued employment with the purchasing company endangered or prejudiced in any manner. The number of pilots affected in such event should in no case be larger or smaller than the normal number of pilots used in that operation at the time this event is approved by the Civil Aeronautics Board."

Now, can you tell me why the difference in the two resolutions?

Mr. Bennett: If you know—I think you should add.

Mr. Reilly: Well, you have added it for him. I think you are doing very well. [2225]

Examiner Wrenn: Go ahead.

I think you should address your remarks to the Examiner and not to each other.

The Witness: The difference in the resolutions is the resolution of the first Executive Board meeting in May, 1947, and this resolution was the combined opinion of the second Executive Board meeting in November.

Q. (By Mr. Reilly): In other words, this resolution says nothing about the number of pilots; is

(Testimony of A. W. Stephenson.)

that right? A. That is right.

Examiner Wrenn: Let us identify those.

Q. (By Mr. Reilly): The May 24, 1947, resolution does not say anything about the number of pilots involved—number of Western pilots involved; is that correct? A. That is right.

Q. Now, the November, 1947—I think that meeting was held November 20, if I may not be mistaken—the November 20, 1947, resolution speaks of 21 pilots. A. That is right.

Q. Were there 21 pilots flying Route 68 for Western Air Lines on March 6, 1947?

A. No, it was the minimum normal operation there with actually 46.

Q. Flying?

A. Flying that route that month.

Q. All right. On May 20, 22, 1947, how many pilots were flying the route? [2226]

A. It was down to the—it was the same operation——

Q. Just give me numbers, if you will, Captain.
Mr. Bennett: If you know.

The Witness: I don't know.

Q. (By Mr. Reilly): You have been talking about the number involved since you have been on the stand, both as to men and as to crew members.

Mr. Bennett: I still don't think he should argue with the witness.

Examiner Wrenn: We have got an answer. Go ahead.

Q. (By Mr. Reilly): How many crew members were flying the route on August 25, 1947?

(Testimony of A. W. Stephenson.)

A. I don't know.

Q. And your position today, or since this hearing started, is that you are arbitrating with United Air Line pilots with respect to the number of crew members and seniority? A. That is right.

Q. When did these negotiations start?

A. About a week ago.

Q. And with whom?

A. With United's pilot representatives.

Q. Was Mr. Fallon in that group? A. Yes.

Q. And Mr. McBain? A. Yes.

Q. And who else? [2227]

A. Mr. Brady and Mr. Gillespie.

Q. R. W. Brady? A. That is right.

Q. Has there ever been any time the United pilots indicated to you that they were opposed to the absorption of any Western pilots by United?

Mr. Bennett: May I have the question?

Examiner Wrenn: Read the question.

(The question was read.)

Examiner Wrenn: That is your own personal knowledge, Captain. To you, personally?

Mr. Reilly: That is right.

The Witness: No.

Q. (By Mr. Reilly): Did you ever discuss this matter with a pilot of United named Captain Joe L. Crouch? A. Many times.

Q. He never at any time indicated to you that United's pilots were opposed to the taking into United of any Western pilots? A. No.

Q. Do you know a captain by the name of Captain L. L. Jones of United Air Lines?

(Testimony of A. W. Stephenson.)

A. I do.

Q. Did you ever discuss with him this proceeding, and, if so, did he ever indicate to you that the United pilots were opposed to absorption of any pilots by United?

A. I never discussed it with Mr. Jones.

Q. And Mr. Crouch never indicated? [2228]

Mr. Bennett: Well, I think he should finish the question.

Indicated what?

Examiner Wrenn: Well, I think it is clear on the record.

Do you have any answer to that, Captain, or not?

The Witness: I answered it once.

Mr. Reilly: He answered it once. The Captain knows the answer.

Examiner Wrenn: All right. Proceed.

Q. (By Mr. Reilly): Under what authority have you commenced arbitration with United's pilots? Is there something in the A.L.P.A. that gives you fellows the authority to do that? Is there anything in your contract with Western, or if you know, with respect to United's contract with the pilots that permits you to do this?

A. Well, I don't quite get that question.

Q. I will restate it: Is there anything in your contract with Western that precludes you from entering into an arbitration such as you say you have entered into with United's pilots? A. No.

Q. And are you free to tell us whether or not

(Testimony of A. W. Stephenson.)

the negotiations are completed and you have come to an agreement?

A. The negotiations are not completed.

Q. Have you completed negotiations with respect to seniority?

A. They are not complete, no. [2229]

Q. That is one thing you are discussing?

A. We are doing.

Q. And can you tell us the number of pilots that is going to be suggested that United should absorb?

A. No.

Q. Has anybody from—Has Mr. Fallon or Mr. Brady or Mr. Gillespie or Mr. McBain at any time to you indicated that they had any authority, direct or indirect, or permission from management of United Air Lines to discuss this matter with you?

Mr. Bennett: Do you understand the question? If you don't, have it read.

The Witness: Will you read it?

Examiner Wrenn: Read the question.

(The question was read.)

The Witness: No, because it has never occurred to either group that under our existing contract in any way the United Air Lines or Western Air Lines had any authority to—had assumed any authority to tell us what we could and what we could not do with respect to this matter, in our own Association.

Q. (By Mr. Reilly): That is right.

Now, you have stated a number of times that after you complete this arbitration, or whatever

(Testimony of A. W. Stephenson.)

name you wish to call it, you are going to present it to the Civil Aeronautics Board and recommend that that is the way this matter be disposed of.

Have you ever given any thought to whether or not the [2230] management of United Air Lines might be contacted or communicated with with respect to the proposal that might be submitted to the Board?

A. Our thought is that we make the recommendation to the Board.

Q. In other words, you have no thought whatsoever in the interest of solving the matter, let us say, amicably, if it could be, or any other way? You are going to present it right to the Board, and our pilots have agreed with you? A. That is right.

Q. Now, in the event that United Air Lines, in the event that the Board directs United Air Lines to accept the results of your arbitration, and United says that they will not accept the condition, what will be the position of the Western pilots?

A. I don't know.

Q. Has that matter been discussed between the pilots of United and the pilots of Western Air Lines?

A. No, because we have assumed that the Board reopened this case to determine this matter and complete it, and we are prepared to do our part in helping them to arrive at a solution, and that is what we propose to do—to do everything we can to——

Q. That is right. A. ——to do so.

Q. All right, in light of that, will you answer

(Testimony of A. W. Stephenson.)

me this question: When did you first have knowledge or information that United Air Lines was to commence operations over the transferred route on September 15, 1947? [2231]

A. A day or so after the order was issued.

Q. It was made public—the date of the order was August 25, and it was made public August 26?

A. That is right.

Q. What did you do after the order with respect to reopening the proceeding in the light of no condition being contained in the order?

A. I went home and thought it over.

Q. And then after you thought it over, what did you do? A. I——

Q. What was your title on the Executive Council of W.A.L. at that time, Captain?

A. I had been delegated to represent Western pilots in this matter.

Q. You were not either master or assistant master?

A. No, I was not. I was acting as assistant to the master on this matter.

Q. You were delegated to assist in this matter?

A. That is right.

Q. After you thought it over what did you do and when did you do it?

A. I immediately consulted with as many of our own pilots as it was possible to get together and discuss it.

Q. Did you come to any conclusions?

A. Yes.

(Testimony of A. W. Stephenson.)

Q. What were those conclusions, or conclusion?

A. We came to the conclusion that we should ask A.L.P.A. headquarters to ask for a [2232] reconsideration.

Q. Was that on or before the bulletin board notice of September 4, with respect to dismissals or furloughs?

A. It was going on at the same time.

Q. That is very important that you try to tell me for the purposes of this examination whether it was before or after.

A. Well, the dates set that. We started to work on that on the 26th or 27th. This bulletin board notice didn't come out until the 4th.

Q. And at all times you were aware that United proposed to commence operations September 15; is that correct?

A. After the announcement came out.

Examiner Wrenn: We still don't have the answer to that question, though, Captain, as to whether or not you and the Western pilots decided to ask the A.L.P.A. headquarters to do something in this before the September 4 letter was put on the bulletin board, or not.

The Witness: We did before.

Q. (By Mr. Reilly): Before September 4?

A. Yes.

Q. Can you tell me, then, in light of that knowledge, before September 4, and also in light of the fact that you knew that United proposed to begin operations on September 15, and that the contract

(Testimony of A. W. Stephenson.)

provided that the properties would be transferred at that time, why is it that the A.L.P.A. delayed the filing of the petition for reconsideration to September 23?

A. Because it took a great deal of time and work to [2233] prepare the petition.

I might inform you that the petition—I did a considerable part of it, worked consistently on it for a good many days.

Q. Well, let me ask you about that now. That is interesting.

Tell me what it is that took all the time that you had to be eight days after you knew the operation was going to commence?

Let us go over this petition. Now, what is it that took so much time——

A. Please be careful of my glasses.

Q. I am sorry.

Examiner Wrenn: Who signed the petition?

Mr. Reilly: It is signed by Mr. Behncke.

Mr. Bennett: Are you asking——

Mr. Reilly: He said he did a lot of work on the petition. I am asking him about it.

Mr. Bennett: We heard him——

Examiner Wrenn: Will you gentlemen please refrain for a minute.

I am perfectly willing to have Captain Stephenson testify as to his own part in this thing, but whatever involves Mr. Behncke that is something else.

(Testimony of A. W. Stephenson.)

Mr. Reilly: Why don't I ask the captain to show me what he did on this.

Examiner Wrenn: All right.

The Witness: I helped him prepare, and discussed the form and wording of the entire text of it. [2234]

Q. (By Mr. Reilly): Let me ask you about this. This part here is the decision. That didn't require any work.

Examiner Wrenn: What page is that?

Mr. Reilly: Page 1.

Examiner Wrenn: All right.

Q. (By Mr. Reilly): This is the September 4 letter. You didn't have to do any work on that, did you? That is just a copying job? A. No.

Q. This is testimony out of the record also, isn't it? A. Yes.

Q. That is a continuation of the testimony; is that correct? A. That is right.

Examiner Wrenn: Let's clear it up and get it this way.

Captain, did you prepare a draft of that or a preliminary draft?

The Witness: In the first place, I had to go to Chicago to do it. I had to take someone with me. I had to make a study of the whole thing and try to get as accurate and as intelligent a picture of the whole situation as we saw it into the petition.

Mr. Reilly: Well, the record and the petition are all a part of the record. I won't labor the record any more with it. The Board and the Examiner are familiar with what is in it.

(Testimony of A. W. Stephenson.)

Q. (By Mr. Reilly): Have you any idea, Captain, when your arbitration [2235] with Messrs. Fallon, et al., may be completed?

Mr. Bennett: Just a minute. I don't think the record has indicated that the arbitration is going to be with Mr. Fallon.

Q. (By Mr. Reilly): The board of which Mr. Fallon is chairman, Captain Stephenson?

A. Yes.

Q. When? A. Within 30 days at the most.

Q. It won't be completed before this hearing is ended? A. No.

Q. Do you plan to submit it after the hearing?

A. That is right.

Mr. Reilly: Mr. Examiner, in view of the testimony yesterday and today of Captain Stephenson, I ask that the Examiner direct the Air Line Pilots Association to furnish the minutes of the meetings which resulted in the adoption of the resolution of May 24, 1947, and the minutes of the meeting of the Executive Board of the Air Line Pilots Association, which resulted in the adoption of the resolution set forth in the petition, and I believe the date of adoption was November 20, 1947.

Examiner Wrenn: Is there any objection to furnishing that information, Mr. Bennett?

Mr. Bennett: I can tell you now I can't furnish it. But I would like to know what purpose would be served if I could furnish it.

Examiner Wrenn: Then why argue about [2236] it?

(Testimony of A. W. Stephenson.)

Mr. Reilly: I would be happy to state that on the record.

Mr. Bennett: If you would be happy, I would like to hear it.

Examiner Wrenn: Just a minute.

Mr. Reilly: There has been considerable testimony that the United and Western pilots are now in approximate agreement. I use the word "approximate" advisedly.

The Council of United Air Lines' pilots intervened on the basis of their—a copy wasn't served on me, but from reading it I understood their position was different from that of Western—otherwise there would be no point in their intervention, because their position could be represented by counsel for A.L.P.A.

Now, we have reason to believe that from the start of this transaction the pilots of United Air Lines, including Mr. R. W. Brady, whose name was mentioned here, were strenuously objecting to the absorption, and I don't want to start over again with the September meeting, but I want this record to show at what time, if any, the pilots of Council 57 have ever changed their minds, and to what extent.

And I think the minutes of those meetings would show—and I have information to believe that the proceedings of those meetings are transcribed, and that they can furnish us such transcriptions of the position taken by United's pilots.

Mr. Bennett: Are you speaking now of the

(Testimony of A. W. Stephenson.)

meetings from which these two resolutions that you have read into the record came?

Mr. Reilly: The full proceedings, the transcripts of [2237] those meetings.

Mr. Bennett: I don't even know that there are transcripts. I question whether there are. But I am not in a position to furnish them in any event. The resolutions are in the record, and whatever the resolutions state——

Examiner Wrenn: What do you mean, you are not in a position to furnish them?

Mr. Bennett: I don't know whether we have them, or not, and I couldn't certainly agree to furnish them.

Mr. Kennedy: Mr. Examiner, I think if they are available they ought to be furnished.

Mr. Reilly: Mr. Examiner, if you don't direct them, we may ask for a subpoena. But we have made up our minds to subpoena for other information.

Mr. Bennett: That is a different matter. If he subpoenas us, and we have to produce them, if we have them I presume we will.

Mr. Reilly: You mean you won't honor a request of the Examiner?

Mr. Bennett: I am not in a position to answer the question.

Mr. Reilly: I want to state that we have information, and are led to believe that there are certain documents that are in existence, and if our pilots take the position either directly on the witness

(Testimony of A. W. Stephenson.)

stand, or—I mean the pilots of Council 57, that is, if Mr. Bennett is speaking for them, we are going to ask that they be placed under oath, and if they wish to disavow the statement of counsel that——

Examiner Wrenn: As long as Council 57 has intervened [2238] here and made representation that they had a substantial interest that would not be taken care of, and we permitted them to come in here, I had intended myself later in the proceeding to ask a few questions about that.

My only question is, can you get the information from those who are here, or is it necessary to go on and get the documents?

Mr. Reilly: They are here, and I would say that if they were put on the witness stand all I would ask is about the previous position—and we are certainly not taking the position that our pilots haven't the right to change their minds. But Captain Stephenson has said that Mr. Crouch, who is master of the Council, never took the position that the pilots of United had any opposition to the absorption of the Western pilots.

Examiner Wrenn: Let's be clear on that. I don't remember that Captain Stephenson stated that. I think your question at that time was, did Mr. Crouch ever say he was——

Mr. Reilly: No.

Examiner Wrenn: Then clear the record on it.

Q. (By Mr. Reilly): Did Mr. Crouch ever state to you that there was ever any opposition in

(Testimony of A. W. Stephenson.)

his Council to the absorption of Western pilots by United as a result of this transaction?

A. Captain Crouch never indicated to me any of the proceedings in meetings of his Council.

Q. Let me ask you this: At that December 5, meeting you talked about, did you state to me that that resolution was adopted over United Air Lines' opposition? [2239] A. I may have.

Q. Did you attend the November meeting in Chicago, the Executive Board?

A. That is right.

Q. Did any United pilot—was Captain Brady there?

A. No—Captain Brady was there. He was not a member of the Board.

Q. Was Captain Crouch there? A. Yes.

Q. Did they, at any time, state any opposition to this resolution that was finally adopted?

A. Captain Brady did.

Q. Did Crouch indicate at that meeting that he didn't want any resolution to be adopted, to be an ironclad rule?

A. I don't understand a question of that kind.

Q. Well, I have asked you these questions before, haven't I?

Mr. Bennett: May I just for a moment?

Examiner Wrenn: Certainly.

Mr. Bennett: I don't see any purpose in the further examination of Captain Stephenson along this line. It has been indicated here—unless it will

(Testimony of A. W. Stephenson.)

serve some useful purpose here in the case, I am going to ask that it be stopped at this point.

It has been indicated in this record that the United pilots and the Western pilots, whatever the resolutions may have been passed, or whatever had been between these groups previously, that they are at this time in process of not only settling numbers, identities, and seniority, but that they [2240] would recommend then to the Board in accordance with that finding that comes out of an arbitration that they are now in process of conducting.

Now, what has gone on before in this matter as to resolutions, who objected, somebody objecting, anybody objecting, is, it seems to me, only confusing this entire issue, or this case. And if it is possible, as has been indicated, or if it is true, as has been indicated under oath, or in this hearing, that these two groups of pilots are now in complete accord—with this exception, that they are in arbitration, and that the answer to the arbitration will be final and binding upon both of them, then I see no purpose can be served in this character of examination.

If, as a matter of fact, they were still at odds——

Examiner Wrenn: I can't agree with you there, Mr. Bennett. If you had reached an agreement and brought it in here and we had it before us, there would be much more weight to what you say. But you haven't reached an agreement.

Mr. Bennett: I grant you that—yes, we have

(Testimony of A. W. Stephenson.)

reached an agreement that will entirely dispose of this matter.

Examiner Wrenn: We haven't seen it.

Mr. Reilly: He says he sees no difficulty with it. He may be right as far as the pilots are concerned, but United Air Lines certainly has an interest in this matter.

Mr. Bennett: Oh, no place in this record has anybody indicated that United Air Lines could possibly be bound by any arbitration proceeding between the pilots.

Mr. Reilly: They haven't said that, but they have expressed themselves that they are going to give it to the [2241] Board, give it to us with a meat ax.

Examiner Wrenn: I can't agree with you there, Mr. Bennett, because we don't have an agreement before us here between the pilots.

Mr. Reilly: Let me ask a question to clear it up.

Examiner Wrenn: All right.

Q. (By Mr. Reilly): If there has been no stated opposition by the pilots of Council 57, why is it, Captain Stephenson, that in almost three years which have elapsed since the signing of the contract—two years and eight months—that the pilots have been unable to agree and present a proposal either to the Civil Aeronautics Board or to the managements involved?

A. I—in answering you, you have assumed that there has been no stated opposition, which is to my way of thinking incorrect.

(Testimony of A. W. Stephenson.)

Q. Well, you tell me about that. I have been trying for half an hour to get you to tell me about that.

A. But as to who stated what to who, you have more knowledge than I have.

Q. Well, I certainly haven't as much involved. You are representing the Western pilots. Don't you talk to United's?

Examiner Wrenn: All right, now, ask him questions.

Q. (By Mr. Reilly): That is a question. Did you talk to United's pilots? A. Yes.

Q. Did you come to an agreement? [2242]

A. We have now.

Q. Did you at any time in the two years and eight months previous to today? A. No.

Q. How many times did you meet with them?

A. Not very many times.

Q. And is this agreement that you are close to negotiating, does this go for the transfer of all the pilots that have been riding the route?

Examiner Wrenn: Do you understand that question?

The Witness: No.

Q. (By Mr. Reilly): Does it comprise the 21 or 46 or 14 pilots you are talking about—

Mr. Bennett: If any.

Examiner Wrenn: Just a minute. If the Captain doesn't understand the question he can say so.

Mr. Bennett: Have him read the question.

(Testimony of A. W. Stephenson.)

Examiner Wrenn: Would you read the question, please?

(The question was read.)

The Witness: There is no agreement yet as to number.

Q. (By Mr. Reilly): Let me put it this way, Captain, if I may: Is the negotiations which are pending between Council 57 and your Council a compromise settlement?

A. No, it is an agreement to arbitration.

Q. Well, do you believe that you are going to stand on this resolution of 21 pilots adopted in November?

A. Before the arbitrator, perhaps. [2243]

Q. What is the question you are going to put to the arbitrator? If there is any grievance, why do you have it—or disagreement, why do you have an arbitrator?

A. We are having him to decide the number of pilots involved, their identities, who they are, and their recommended positions on the United seniority list.

Q. Well, there must be some disagreement, isn't there?

A. About what?

Q. Between you and Council 57.

A. Not any more. We have only one agreement, and that is to arbitration.

Q. You mean there is——

Examiner Wrenn: There is a variance in the answer.

Will you read the question and answer?

(The record was read.)

(Testimony of A. W. Stephenson.)

The Witness: Say it this way: We have an agreement which settles all disagreements.

Q. (By Mr. Reilly): Well, then, there must have been a disagreement?

A. There is a disagreement.

Q. Thank you very much, Captain.

A. For the reason that when Route 68 was transferred to United Air Lines, 28 to 31 Western Air Lines' pilots were reduced, and at that time 28 to 31 United Air Line captains received flights and flying pay, and obtained runs.

Q. This isn't responsive, but if you want to listen to it, it is all right with me.

A. It is part of my answer.

And time has elapsed since then and changed the situation [2244] considerably, and it is a matter now of determining what that sum should be. We don't want to ask United to take somebody that is no longer with Western.

For instance, as in one case——

Q. Well, Captain Hollenbeck wasn't with them since June some time away back in 1947. But you are still insisting upon 28 pilots.

Mr. Bennett: Is that a question or a statement?

Mr. Reilly: Just put a question mark after it and it is a question.

The Witness: Is it a question?

Examiner Wrenn: Yes.

Mr. Bennett: Can we have it read, please, so we may understand it if it is possible?

Examiner Wrenn: I think there has been enough of this needless by-play here back and forth.

(Testimony of A. W. Stephenson.)

Mr. Bennett: I am not in favor of it.

Examiner Wrenn: Well, just address your remarks to me, and I will direct Mr. Reilly to do the same thing, and I will make my rulings. And I don't need all of this outside help.

Read the question.

(The question was read.)

The Witness: I agree with the proposed position of Western Air Lines that shows a Captain Hollenbeck was still an employee of Western Air Lines until about the 6th of September, 1947, when he did not return from leave.

Is that right?

Q. (By Mr. Reilly): Well, whatever the date is it is in their rebuttal [2245] exhibit.

A. That is right.

Q. Will you explain for me how this arbitration proceeding was set up, and who set it up?

A. The representatives of the two groups, United Air Lines' and Western Air Lines' pilots, have agreed that they will arbitrate this matter. There will be two representatives on the Board who are active pilots from Western, and—or two pilots from Western and two pilots from United, and that the Mediation Board will provide the arbitrator, the fifth member.

Q. Out of their panel; is that right? The Mediation Panel? A. Yes. They will select a man.

Mr. Reilly: That is all I have.

Examined Wrenn: Do you have anything more, Mr. Bennett?